SUPREME COURT, U. S.

No. 691

OCT 8 1967

JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1967

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NELSON A. ROCKEFELLER, as Governor of the State of New York, LOUIS J. LEFKOWITZ, as Attorney General of the State of New York, JOHN P. LOMENZO, as Secretary of State of the State of New York, MALCOLM WILSON, as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, and ANTHONY J. TRAVIA, as Speaker and Presiding Officer of the Assembly of the State of New York,

Defendants-Appellants,

*v.*

DAVID I. WELLS and DONALD S. HARRINGTON, individually and as Acting Chairman of the State Committee of the Liberal Party of the State of New York,

Plaintiffs-Appellees.

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## JURISDICTIONAL STATEMENT

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Defendants-Appellants,

*v.*

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Plaintiffs-Appellees.

---

## JURISDICTIONAL STATEMENT

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### Opinion Below

The opinion of the three-judge district court, dated May 10, 1967, has not yet been reported. A copy of the opinion is set forth in Appendix A, *infra*.

### Jurisdiction

This proceeding was brought by appellees in the United States District Court for the Southern District of New York seeking declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202 and 2281, et seq., declaring Chapter 980 of

the New York Laws of 1961 (the 1961 Congressional Districting Act) to be void and invalid as contrary to Article I, § 2 and to the Fourteenth Amendment of the United States Constitution. Jurisdiction in the District Court was asserted under the Fourteenth Amendment of the United States Constitution and under 42 U.S.C. §§ 1983, 1988 and 28 U.S.C. § 1343(3).

The judgment sought to be reviewed, which declared Chapter 980 of the New York Laws of 1961 to be unconstitutional, was dated July 26, 1967 and entered on July 27, 1967.

A notice of appeal was filed by the defendants on August 9, 1967 in the United States District Court for the Southern District of New York.

Jurisdiction of this Court to review on direct appeal the judgment of the three-judge district court is conferred by 28 U.S.C. § 1253. See *Baker* v. *Carr*, 369 U. S. 186; *Wesberry* v. *Sanders*, 376 U. S. 1; *WMCA, Inc.* v. *Lomenzo*, 377 U. S. 633.

## Statute Involved

New York State Law § 111 (Laws, 1961, Ch. 980), which defines the boundaries of New York's forty-one congressional districts, is set forth in Appendix C, *infra*.

## Questions Presented

1. Did the District Court err in adjudging that Chapter 980 of the Laws of 1961 of the State of New York, which established congressional districts in which no district varies by more than 15% from the average population per district, is void and invalid as being contrary to Article I, § 2 of the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States?

2. Did the District Court err in assuming plaintiffs have the requisite standing to bring this action in the absence of any showing of personal injury?

3. Assuming, *arguendo*, that the population variations in the congressional districts established by Chapter 980 of the New York Laws of 1961 fail to satisfy the requirements of the Constitution of the United States that would be applicable to a permanent plan for congressional apportionment, did the District Court err in refusing to permit existing congressional district lines to remain in effect in the State of New York until the 1970 census figures are available where:

a) the latest statewide population figures that are available in New York are from the 1960 census;

b) the District Court acknowledged that there has been extensive movements of population throughout the State of New York since 1960;

c) the United States Bureau of the Census has advised that a statewide census in New York could not be completed in time for the 1968 Congressional primaries and general elections; and

d) in view of the fact that a further re-districting of Congressional lines in New York will be necessary immediately following the 1970 census?

## Statement of the Case

In July, 1966, five years after the enactment of New York's present congressional districting statute (Laws, 1961, Ch. 980), plaintiffs commenced this action attacking this statute as being contrary to Article I, § 2 and to the Fourteenth Amendment of the Constitution of the United States. The constitutionality of Chapter 980 previously was challenged in two actions before statutory three-judge Courts and in each instance the judgment dismissing the complaint was affirmed by this Court. *Wright* v. *Rockefeller*,

211 F. Supp. 440 (S.D.N.Y., 1963), *aff'd* 376 U. S. 52, *reh. den.* 376 U. S. 959; *Honeywood* v. *Rockefeller*, 214 F. Supp. 897 (E.D.N.Y., 1963), *aff'd* 376 U. S. 222.

The plaintiffs in the present action are two registered voters residing in the 6th and 17th Congressional Districts in New York City.* In their complaint, plaintiffs contend that New York's present congressional districts, which contain a maximum population deviation of 15.1% from the average population per district, "violate both the letter and spirit of the 'one man—one vote' concept;" that the districts "ignore elementary principles of compactness and contiguity;" and that such districts were based on "discriminatory partisan political considerations" (para. 14).

The complaint requests the convening of a special three-judge court pursuant to 28 U.S.C. §§ 2281 *et seq.* to declare Chapter 980 of the New York Laws of 1961 to be invalid as being contrary to Article I, § 2 of the United States Constitution and as depriving the plaintiffs of the equal protection of the laws as guaranteed by the Fourteenth Amendment. The complaint further prays for an injunction restraining the defendants from enforcing the election laws which relate to the provisions of the present congressional districting statute, and requests a court order directing the Lieutenant Governor and Speaker of the Assembly, allegedly representing all members of the Senate and Assembly respectively, to take such action as may be directed by the Court to secure compliance with the United States Constitution.

Plaintiffs' motion to convene a three-judge Court was granted by order entered on October 24, 1966. Plaintiffs subsequently moved for summary judgment and defendants moved before the three-judge Court to dismiss the complaint.

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* Plaintiff Donald S. Harrington also alleges that he is Acting Chairman of the State Committee of the Liberal Party of the State of New York, but the complaint does not allege whether he intended, or was authorized, to bring this action in a representative capacity.

In its opinion issued on May 10, 1967, the three-judge Court held that "[o]n the basis of population inequality alone, the [New York Congressional Districting] Act fails to meet constitutional standards." In view of this conclusion, the Court did not deal with plaintiffs' other objections concerning alleged lack of compactness and partisan gerrymandering, except to note that with respect to the latter point, no proof had been offered.

In discussing the remedy, the Court acknowledged that:

> "Accuracy would call for a decree which would be based upon the 1970 census, knowledge of the number of congressional seats, and the immediate enactment in 1971 of a constitutional Act based upon the Supreme Court mandates, which Act would apply to the 1972 election of congressmen and which would retain jurisdiction in this court as a forum before which the litigants could press alleged failures to proceed. * * *" App. 13a.

However, the District Court interpreted the decisions of this Court in *Swann* v. *Adams*, 383 U. S. 210, 385 U. S. 440, as precluding such an extension and, accordingly, entered judgment directing the New York Legislature (or any delegated authority) to enact into law a new congressional districting plan, effective no later than March 1, 1968.

## The Questions Presented Are Substantial

The issues presented by this appeal are of vital concern to the 18,000,000 citizens of the State of New York in determining their future course of congressional representation. The State of New York will be required, as will be noted below, to enact a new congressional reapportionment plan as soon as the 1970 census figures have been established. In directing that a congressional reapportionment plan be enacted in 1968, the District Court has created a situation in which the citizens of New York will be forced to experience three different sets of congressional district lines within a six-year period.

The disorder which will inevitably arise from three changes in congressional constituencies cannot be lightly regarded, particularly where the existing congressional lines were the result of a good faith effort in 1961 to make substantial equality of population the controlling standard in the establishment of congressional district lines.

It is evident from a reading of the District Court's opinion that their decision to order a new reapportionment in 1968 was made with reluctance, but with the belief that such action was necessitated by this Court's opinions in *Swann* v. *Adams*, 383 U. S. 210 and 385 U. S. 440. Insofar as the Court below might have incorrectly interpreted the *Swann* opinions as imposing a rigid rule limiting the discretion of the district courts, further clarification by this Court would be of immense value to all the States of this union.

**(a) The Challenged State Statute**

Chapter 980 of the New York Laws of 1961 was enacted following the congressional determination based on the 1960 decennial census reducing the number of congressional districts in New York from forty-three to forty-one. Although the enactment of this statute predated the decisions of this Court in *Baker* v. *Carr*, 369 U. S. 186, and *Wesberry* v. *Sanders*, 376 U. S. 1, the Joint Legislative Committee on Reapportionment of the New York State Legislature, in preparing the 1961 Congressional Districting Act, determined that "the most important standard is substantial equality of population." *Interim Report of the Joint Legislative Committee on Reapportionment* (1961 Legislative Document No. 45, p. 4). The Committee recommended that a maximum variation of fifteen per cent from average population per district would "preserve substantial equality of population and permit consideration to be given to other impartial facts such as community of interest and the preservation of traditional associations". *Id.* at 4-5. In acting upon this recommendation, the New

York Legislature created forty-one congressional districts, with twenty-eight districts having a population less than 10% from the average population per district, and the maximum variation being 15.1% from the average occurring in the 12th Congressional District in Kings County.

The maximum variation of 15% from average population per district was the standard recommended by the American Political Science Association and endorsed by former President Truman. N. Y. Legislative Document No. 45 (1961); Hearings, Standards for Congressional Districts, H. R. Committee on the Judiciary Sub-Committee No. 2, 86th Congress, First Sess., pp. 28, 31, 36 (Serial No. 10) June 24, and Aug. 19, 1959; Hacker, *Congressional Districting* 65 (1963). It was also the standard set forth in the Congressional Districting Bill (H. R. 5505) which was drafted after the *Wesberry* decision and which passed the House of Representatives. See U. S. Code Cong. & Admin. News No. 3, April 20, 1965 at viii, 89th Congress 1st Session (30 U.S.L. Week 2482). The Bill failed to pass the Senate. The standard of 15% was also advanced by the plaintiffs in *Wesberry* v. *Vandiver,* 206 F. Supp. 276, 279, rev'd *sub nom Wesberry* v. *Sanders,* 376 U. S. 1 (1964)—which became the classic case in the area of congressional reapportionment—as being within the constitutionally permissible variation range.

Recognizing that population groupings among the states do not generally follow checker-board patterns and that reapportionment cannot be left to a slide ruler, the 15% maximum-variance standard has frequently been advanced by the Courts as a reasonable test for evaluating legislative apportionments. See, *e.g., Toombs* v. *Fortson,* 241 F. Supp. 65, 70 (N. D. Ga., 1965), aff'd 384 U. S. 210; *Silver* v. *Brown,* 46 Cal. Rptr. 308, 405 P. 2d 132; *Yancey* v. *Faubus,* 251 F. Supp. 998, 1002 (E. D. Ark., 1965), *aff'd sub nom Crawford County Bar Association* v. *Faubus,* 383 U. S. 271. Certain federal courts have even sustained re-

apportionment plans with population deviations of more than 15%. See *Clark* v. *Carter*, 218 F. Supp. 448 (E. D. Ky., 1963); *Klahr* v. *Goddard*, 250 F. Supp. 537 (D. Ariz., 1966); *Dungan* v. *Sawyer*, 253 F. Supp. 352 (D. Nev., 1966).

The Court below rejected the validity of the 15% population standard. In holding that New York's congressional districting statute failed to meet constitutional standards, the District Court considered the opinion of this Court in *Swann* v. *Adams*, 385 U. S. 440 to be controlling. However, the factual situation in Florida in the *Swann* case is considerably different than the background in New York.

The Florida reapportionment plan that was reviewed by this Court in 1967 contained population deviations of more than 15% from the norm in both the Senate and the House. Moreover, that reapportionment statute was the third plan submitted by the Florida Legislature following the rejection by this Court of two previous reapportionment statutes. In light of that background, this Court had strong reason to doubt that the Florida Legislature had made a good faith effort to comply with the principle of "one man, one vote" when it established a third plan containing population variations of 30% among Senate districts and 40% among House districts. It is, therefore, difficult to perceive how the *Swann* opinion is determinative of the issues in the instant proceeding. Indeed, the *Swann* opinion recognized that a reapportionment plan with a 10% or 15% variation from the norm might be approved depending upon the particular circumstances of the case. 385 U. S. at 445.

**(b) Plaintiffs' Lack of Standing**

It has long been considered axiomatic that a complainant must clearly establish a direct infringement of his personal rights to be afforded standing in the Federal Courts. *McCabe* v. *Atchison, T. & S. F. Ry. Co.*, 235 U. S. 151; *Poe*

v. *Ullman*, 367 U. S. 497. No opinion of this Court has ever implied that reapportionment cases have created an exception to this basic principle.

As registered voters in congressional districts within New York City, plaintiffs have never established that they have been individually injured by the statute they have attacked in this proceeding.

In acknowledging the fair distribution of congressional districts to New York City, the Court below observed:

> "* * * Assigning 19 districts to New York City, an average population per district of 409,578 resulted. The average for the other 22 districts was 409,109 per district. Thus, the equality of population in these areas, New York City and upstate on this grouping basis (19 and 22) is truly remarkable, and should satisfy the most population-minded court. * * *" App. 2a.

Even with respect to their individual congressional districts, plaintiff Wells, a resident of the 6th Congressional District with a population of 417,367 (2.0% above the norm), and plaintiff Harrington, a resident of the 17th Congressional District with a population of 382,320 (6.6% below the norm) have no cause to complain that their vote has been substantially inflated or deflated when compared with other districts.

Since plaintiffs failed to establish personal injury, the complaint should have been dismissed by the Court below.*

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* Although this Court rejected the challenge to appellants' standing in *Swann* v. *Adams*, 385 U. S. 440, 443, it noted that the District Court had denied intervention to other parties by treating appellants as representing other citizens of the state. Such treatment was not accorded plaintiffs in the instant case.

**(c) The Remedy Imposed By the District Court**

Assuming *arguendo*, that the District Court was correct in declaring that Chapter 980 fails to satisfy federal constitutional standards, it does not necessarily follow that the District Court was required to order an immediate Congressional reapportionment in 1968. This Court has frequently directed district courts to weigh the attendant circumstances surrounding a reapportionment case, such as the possible disruption of electoral and representative processes, before fashioning a decree. *Reynolds* v. *Sims*, 377 U. S. 533, 586-587; *WMCA, Inc.* v. *Lomenzo*, 377 U. S. 633, 655; *Roman* v. *Sincock*, 377 U. S. 695, 711.

The opinion below leaves little doubt that the District Court would have preferred that any new Congressional reapportionment statute be enacted after the 1970 census figures are available (See Excerpt quoted at page 5, *supra*). The District Court noted that there had been extensive population changes throughout the State of New York since 1960, particularly in Nassau and Suffolk Counties. Thus, employing 1960 census figures in the creation of new Congressional district lines in 1968 might create districts that would appear numerically equal on paper, but with actually greater population disparities than presently exist.

While the District Court did express the hope that the New York Legislature might be able to obtain "population statistics as of December 31, 1966" (App. 16a), the only state-wide population figures that exist are the 1960 census figures. There are no available statistics to adequately measure population shifts since 1960. In July, 1967, the United States Bureau of the Census informed the New York Attorney General's office that it would be impossible to complete a new state-wide census in New York in time for the 1968 Congressional primaries and general elections.

The task of establishing new Congressional district lines in 1968 appears all the more improvident in view of the

fact that another Congressional reapportionment will be required after the 1970 census. Article III, § 2 of the proposed State Constitution, which will be submitted to the New York voters this November, requires a new Congressional reapportionment by a redistricting commission following the next Federal decennial census. Regardless of the fate of this proposed Constitution, New York's probable loss of at least one Congressional seat as a result of the 1970 census will require another reapportionment.

Despite these considerations, the District Court regarded its discretion in this matter as limited in light of "the Supreme Court's impatience" expressed in *Swann* v. *Adams*, 383 U. S. 210, where this Court refused to permit an unconstitutional apportionment to operate for a three-year period. However, the reapportionment statute in that case, which had been enacted after a prior statute had been declared invalid by this Court, showed little improvement in reducing population disparities. To have permitted that statute to govern for a three-year period would have been tantamount to rewarding the Florida Legislature for failing to comply with the prior directive of this Court.

The Florida litigation bears no similarity to the instant case. The New York Congressional Districting Act was not enacted in response to, or in disregard of, an existing court order. Nor did the Florida case involve the prospect of using population figures that are eight years old. Here again, the court below has treated the *Swann* opinions, which may have been justified on their particular facts, as imposing an iron-clad rule limiting its discretion to deal effectively with the complexities of the situation in New York.

## Conclusion

For the reasons stated above, it is submitted that the Court has jurisdiction of this appeal and that probable jurisdiction should be noted.

Since the judgment appealed from directs the State of New York to enact into law a Congressional districting plan, effective no later than March 1, 1968, a large expenditure of public revenues and working hours soon will be directed to this end. It is, therefore, respectfully requested that this appeal be given summary consideration and that the judgment below be summarily reversed or, in the alternative, modified so as to defer the establishment of new Congressional district lines in New York until the 1970 census population figures are available.

Dated: New York, New York, October 3, 1967.

Respectfully submitted,

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# APPENDICES A, B and C

## APPENDIX A

### Opinion of the District Court, dated May 10, 1967.

MOORE, *Circuit Judge*

Plaintiffs, David I. Wells and Donald S. Harrington, individually and as Acting Chairmen of the State Committee of the Liberal Party of the State of New York, bring this action against Nelson A. Rockefeller, as Governor of the State of New York, the Attorney-General, the Secretary of State, the Lieutenant Governor and Presiding Officer of the Senate, and the Speaker and Presiding Officer of the Assembly, and pray for judgment:

(1) that Article VII, Section 111, Chapter 980 of the Laws of 1961 (New York) is void and invalid as contrary to Article I, Section 2 of the United States Constitution;

(2) that alleged existing Congressional malapportionment deprives plaintiffs (a) of their rights without due process of law, and (b) of equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States;

(3) that the Governor be restrained from certifying votes for the election of representatives from the Congressional Districts established under Chapter 980;

(4) that the Attorney-General, and the Secretary of State be restrained from enforcing various election procedures pursuant to said Chapter; and

(5) that the Presiding Officer of the Senate and the Speaker of the Assembly be directed to take such action as may be necessary to comply with the United States Constitution.

Jurisdiction is asserted under the Fourteenth Amendment of the United States Constitution and under 42 U.S.C. §§ 1983, 1988 and 28 U.S.C. § 1343(3). Declaratory relief is sought under 28 U.S.C. §§ 2201, 2202 and 2281, et seq.

*Appendix A.*

Upon plaintiffs' motion, a three-judge court was convened to hear the isues presented. Before this court, plaintiffs now seek a summary judgment declaring Article VII, Section 111, Chapter 980 unconstitutional. Also before us is defendants' motion to dismiss the complaint.

*The Statute Attacked as Invalid*

Prior to the enactment of Chapter 980 (L. 1961), Congress, acting upon the 1960 decennial census figures, reduced the number of New York's congressional districts from 43 to 41. Chapter 980 was enacted to establish the boundary lines of these 41 districts. At the time during which it was engaged in the task of reapportionment, the Joint Legislative Committee on Reapportionment did not have the advantage of the various rather recent decisions of the Supreme Court on the subject. Little purpose, therefore, will be served by commenting at this date on the Committee's arithmetic and geographic thinking in endeavoring to achieve such reapportionment because the ten (10%), fifteen (15%) (this figure the Committee selected as a maximum) and twenty (20%) percent variations considered by the Committee are now quite outmoded. Basically, however, the Committee did divide the population of the State into 41 parts which produced a hypothetical population figure of 409,326 per part. It then separated New York City with its population of 7,781,984 from the rest of the State. Assigning 19 districts to New York City, an average population per district of 409,578 resulted. The average for the other 22 districts was 409,109 per district. Thus, the equality of population in these areas, New York City and upstate on this grouping basis (19 and 22) is truly remarkable, and should satisfy the most population-minded court. However, in arriving at boundary lines for these 41 districts, the Legislature soon discovered that the problem was more difficult than one of

long division on a classroom blackboard. Before legislative agreement was reached, the districts assumed designs of which a jigsaw puzzle artist would have been proud and which had very substantial population disparities. These disparities plaintiffs now attack and, in support of their position, cite many recent Supreme Court decisions in addition to *Wesberry* v. *Sanders*, 376 U. S. 1 (1964), as establishing population equality as the only guide in reapportionment.

The defendants (collectively referred to as the State) claim that the constitutionality of Chapter 980 has been sustained twice by three-judge courts, and that dismissals of the complaints in *Wright* v. *Rockefeller*, 211 F. Supp. 460 (S.D.N.Y. 1962) and in *Honeywood* v. *Rockefeller*, 214 F. Supp. 897 (E.D.N.Y. 1963) have been affirmed by the Supreme Court, 376 U. S. 52, *rehearing denied*, 376 U. S. 959 (1964), and 376 U. S. 222 (1964), respectively.

To test the validity of the State's claim, the issues presented in these cases must be analyzed. In *Wright*, *supra*, although population inequalities among the 17th, 18th, 19th and 20th Congressional districts were before the court, the plaintiffs there stressed an alleged segregation of eligible voters by race and place of origin and charged that the 17th district was contrived to exclude non-whites and Puerto Ricans, whereas the 18th, 19th and 20th districts were drawn so as to include large numbers of this group. The basis for the majority decision was a failure of proof that the Legislature had fixed the boundaries of these districts along racial lines. The grounds for affirmance by the Supreme Court make such failure of proof quite explicit. Mr. Justice Black specifically stated that there was no showing "that the challenged part of the New York Act was the product of a state contrivance to segregate on the basis of race or place or origin." Conversely, the Justice said that the court was not passing on the question

"whether the state apportionment is constitutionally invalid because it may fail in its objective to create districts based as nearly as practicable on equal population," referring to *Wesberry* v. *Sanders*, decided at the same time. 376 U. S. at 58.

In *Honeywood, supra*, the burden of the complaint was the alleged purposeful exclusion, by changing the old Fourth Congressional district into the new Sixth, of 75-80% of the Negro population residing in the old Fourth. Here again, the dismissal of the complaint was based primarily on failure of proof of any such legislative intent. Affirmance by the Supreme Court was based upon *Wright*.

It is thus clear beyond a doubt that neither *Wright* nor *Honeywood* dealt with population disparities. Nor can they be made a sound basis for an argument that the constitutionality of the present Congressional districting statute has been sustained by these decisions.

*The Complaint*

Turning now to the present complaint, the court for purposes of the summary judgment motion accepts the 1960 census figures set forth therein to illustrate the disparities complained of. Using a State average of 409,324 per district, the 12th district (part of Kings County) has a population of 471,001 or 15.1% above average, whereas an adjoining district, the 15th (also part of Kings County), has a population of 350,635 or 14.4% below average—a spread between these two contiguous districts of 29.5%. From a population standpoint, there are six districts over 10% above average (452,826 to 471,001) and seven districts over 10% below average (350,635 to 361,067). The difference between the 12th (471,001) and the 15th (350,635) becomes the more curious because they are both in Kings County and contiguous. Were the populations of these two districts added and divided by two, a figure (410,818) very

close to the State average would result, albeit the boundary lines of the two districts would have to be changed to achieve such equalization.

Another situation of interest exists as to Staten Island (Richmond County), a part of the 16th district. Because of insufficient population on Staten Island to constitute a Congressional district, a segment located on the side of Jamaica Bay was added. There is no way of reaching this segment of the 16th without traversing other districts or proceeding by sea. Closest to Staten Island and now connected by the Verrazzano Bridge is the Brooklyn shore but this area currently is the 15th district. The 14th district also consists of two areas connected solely by a thin uninhabited strip between the waterfront and the Brooklyn-Queens Expressway.

In view of the conclusion reached in this opinion, further comments by the court on the seemingly bizarre structure of the present Congressional districts is unnecessary, first, because in the required redistricting, many of the problems raised by the existing lines may well become academic and, second, because the creation of district lines is, and should be a legislative and not a judicial function, unless, of course, the Legislature creates districts which offend constitutional guaranties.

The complaint also alleges that the district lines were drawn to discriminate in favor of the Republican Party. No proof has been offered to establish this point (*Wright, supra; Honeywood, supra*); hence, it is unnecessary to pass upon its legal sufficiency. However, the Supreme Court in New Jersey did find that "the Constitution is not offended merely because a partisan advantage is in view," *Jones* v. *Falcey*, 48 N. J. 25; 222 A. 2d 101, 103 (1966) and in *WMCA, Inc.* v. *Lomenzo*, 238 F. Supp. 916 (S.D.N.Y. 1965) *aff'd on motion* 382 U. S. 4 (1965), the court said that *Fortson* v. *Dorsey*, 379 U. S. 433 (1965) "makes it clear

that the Supreme Court has refrained from condemning partisan gerrymandering as unconstitutional" (p. 926).

*The Law*

Since the broad principles established by *Baker* v. *Carr*, 369 U. S. 186 (1962), two rules applicable to congressional districts have emerged. First, substantial equality of population among districts in any state is required. Second, there is a burden on the proponent of any districting plan to justify deviations from equality.

I. The first principle stems from *Wesberry* v. *Sanders*, 376 U. S. 1 (1964), namely, that the command of Art. I, § 2 of the United States Constitution "means that as nearly as practicable one man's vote in a congressional election is to be worth as much as another's" (p. 8). To achieve this purpose, the Supreme Court held that "While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives" (p. 18). Conversely, the Court was unwilling to hold that "legislatures may draw the lines of Congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others" (p. 14).

*Wesberry* was soon followed by *Reynolds* v. *Sims*, 377 U. S. 533 (1964), in which, although it was a State legislative apportionment case, the Court stated specifically that in *Wesberry* it had "determined that the constitutional test for the validity of congressional districting schemes was one of substantial equality of population among the various districts established by a state legislature for the election of members of the Federal House of Representatives." 377 U. S. at 559.

*Appendix A.*

After alluding to the differences in the application of the equality rule to state legislative as contrasted with congressional districts, the Court gave the definite pronouncement that "*Wesberry* clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State" *Ibid.* at 560-61.

Such expressions as "as nearly as practicable" and substantial equality" were bound to give rise to various interpretations.

To the court in *Calkins* v. *Hare,* 228 F. Supp. 824, 828 (E. D. Mich. 1964), even a "small percentage of the entire voting population" had a right to vote equally with others, "no matter what percentage of the total they comprise".

In *Preisler* v. *Secretary of State* (Preisler II),[1] 257 F. Supp. 953, 975 (W. D. Mo. 1966), *aff'd per curiam sub nom. Kirkpatrick* v. *Preisler,* 385 U. S. 450 (1967), the court interpreted the Supreme Court's rulings subsequent to *Wesberry* in *Drum* v. *Seawell,* 383 U. S. 831 (1966), *affirming per curiam,* 249 F. Supp. 877 (M. D. N. C. 1965),[2] and in *Alton* v. *Tawes,* 384 U. S. 315 (1966), *affirming per curiam, Maryland Citizens Committee for Fair Congressional Redistricting, Inc.* v. *Tawes,* 253 F. Supp. 731 (D.

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[1] *Preisler II* is a sequel to *Preisler* v. *Secretary of State,* 238 F. Supp. 187 (W.D. Mo. 1965), a case in which the 1961 Congressional Redistricting Act of Missouri was declared unconstitutional. In *Preisler II,* the same plaintiffs succeeded in striking down Missouri's 1965 Congressional Redistricting Act.

[2] Prior to the Supreme Court's affirmance, the District Court held unconstitutional the North Carolina Congressional Redistricting Act passed by the state legislature pursuant to the 1965 decree, but stayed its mandate, allowing the Redistricting Act to govern the 1966 congressional elections only. 250 F. Supp. 922 (1966).

Md. 1966),[3] as holding that "population alone is the sole standard for congressional redistricting."

In *Bush* v. *Martin* (Bush II), 251 F. Supp. 484, 497 (S. D. Tex. 1966),[4] the court equated the "as nearly as practicable" in *Wesberry* (congressional) with the "substantial equality" of *Reynolds* (state legislative) and noted the comment in *Reynolds* that "Mathematical exactness or precision is hardly a workable constitutional requirement" (377 U. S. at 577). The court in *Preisler II*, disagreeing with the *Bush II* approach, refused to follow it, 257 F. Supp. at 979.

At this juncture came the decisions of the Supreme Court on January 9, 1967, which we regard as determinative of the issues here. Although *Swann* v. *Adams* (Swann III), 385 U. S. 440 (1967),[5] involved the redistricting of Flor-

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[3] The District Court adopted its own redistricting plan following two unsuccessful attempts by the Maryland legislature to enact constitutional congressional redistricting plans. See earlier decisions. 228 F. Supp. 956 (D. Md. 1964) and 226 F. Supp. 80 (D. Md. 1964).

[4] In *Bush* v. *Martin (Bush I)*, 224 F. Supp. 499 (S. D. Tex. 1964), *aff'd per curiam*, 376 U. S. 222 (1964), the District Court declared the Texas congressional districting statute unconstitutional. *Bush II* declared the 1965 Texas Congressional Redistricting Act to be valid for a limited period of time, leaving it for the 1967 Texas legislature (itself reapportioned) to correct the deficiencies of the 1965 Act.

[5] This represents the third time this case has been before the Supreme Court. In 1964, the Supreme Court in *Swann* v. *Adams (I)*, 378 U. S. 553, reversed the judgment of a three-judge District Court, *Sobel* v. *Adams*, 214 F. Supp. 811 (S. D. Fla. 1963), upholding the then current legislative apportionment in Florida and remanded the case for further proceedings.

In 1965 the Florida legislature adopted a new plan which the District Court declared unconstitutional, but approved on an interim basis for a period ending 60 days after the adjournment of the 1967 session of the Florida legislature.

*(Footnote continued on following page)*

ida's legislature, the opinion of the Court is applicable (actually *a fortiori*) to congressional districts. The deviations in districts in *Swann III* were substantial, 15% above average in one, 14% in five and more than 10% in six. To us, it seems highly significant that the Supreme Court did not renounce all considerations other than absolute mathematical equality. On the contrary, it specifically adverted to the justifiable variations from a pure population standard and mentioned as possible justifications "integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts or the recognition of natural or historical boundary lines," as set forth in *Reynolds*, 377 U. S. at 579. Such an interpretation of *Reynolds* was wholly consistent with a "rule of reason" in reapportionment matters. The alternative would have been abject judicial surrender of jurisdiction to the mindless computer.

The significance of *Swann III* in congressional district cases is disclosed in the Court's brief "Per Curiam" (also January 9, 1967) in *Duddleston* v. *Grills*, 385 U. S. 455, wherein the Court vacated the lower court's approval of a redistricting plan (Indiana)[*] and remanded the case "for further consideration" in the light of *Swann III*, *Wesberry* and *Reynolds*. *Preisler II*, declaring Missouri's

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*(Footnote continued from preceding page)*

In *Swann* v. *Adams (II)*, 383 U. S. 210 (1966), the Supreme Court again reversed the District Court, finding the waiting period to be too long and remanded so that a valid reapportionment plan might be enacted for the 1966 elections.

In March of 1966, the Florida legislature enacted yet another legislative reapportionment plan, which plan the District Court upheld, 258 F. Supp. 819 (S. D. Fla. 1965). In *Swann III* the Supreme Court reversed the District Court for the third time, finding unjustified, impermissible population variances between districts.

[*] The lower court decision was *Grills* v. *Branigin*, 255 F. Supp. 155 (S. D. Ind. 1966).

reapportionment unconstitutional, was affirmed, 385 U. S. 450. Thus, in summary, the Supreme Court's current views appear to be that the "equal population principle" applies to congressional districts—unless—. The "unless" gives rise to the second principle.

II. The second principle is found in *Wesberry, Reynolds* and the January 9, 1967 decisions, and is that if there be any deviation from equality of population, the burden is on the State or other proponent to justify the deviation. In *Swann III*, the Court reversed "for the failure of the State to present or the District Court to articulate acceptable reasons for the variations among the populations of the various legislative districts . . . ." There was "no attempt to explain or justify the many variations . . . ." The Court cited with approval the statement in *Maryland Citizens, supra*, 258 F. Supp. at 733 that there was no showing that the variation was "unavoidable or justified upon any legally acceptable ground." Thus, the Court does not close the door to disparity provided it be slight and provided it be justified on a "legally acceptable ground."

It is too clear for debate that the present Act, creating the undisputed disparities in New York's congressional districts, violates constitutional requirements as enunciated by the Supreme Court. On the basis of population inequality alone, the Act fails to meet constitutional standards. Thus, reapportionment is required.

Despite the fact that "congressional apportionment is essentially a legislative function", *Bush II, supra*, 251 F. Supp. at 517, certain precepts to be found in the Supreme Court opinions should be noted. The congressional districts (the geographic units) should be contiguous and as symmetrical as possible. The districts should be established "without regard to race, sex, economic status, or place of residence within a state," (*Reynolds*, 377 U. S. at

561) so that "once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit." *Gray* v. *Sanders,* 372 U. S. 368, 379 (1963). Although political considerations *per se* do not create an unconstitutional apportionment, political history teaches the lesson that there are political changes in practically all areas from time to time. No district can be regarded as the private preserve for any present incumbent if it offends the equality of population principle. Even if radical changes have to be made to meet the constitutional test, there will always be available leaders in every district who will be able to vie for the favor of their electorate. As long as these leaders collectively represent substantially equal numbers of a State's population, constitutional requirements would appear to have been met.

## The Remedy

*Time Table*

In *Swann* v. *Adams* (Swann II), 383 U. S. 210 (1966), the Supreme Court, referring to litigation commenced in 1962, wherein it had remanded the case in 1964 for further proceedings in the light of *Reynolds* and related cases, 378 U. S. 553 (1964) said, "The effect of the District Court's decision is to delay effectuation of a valid apportionment in Florida until at least 1969. [1965 plan held unconstitutional by District Court but approved provisionally up to 60 days after adjournment of 1967 session of Florida legislature.] While recognizing the desirability of permitting the Florida legislature itself to determine the course of reapportionment, we find no warrant for perpetuating what all concede to be an unconstitutional apportionment for another three years." The Court (February 25, 1966)

remanded "so that a valid reapportionment plan will be made effective for the 1966 elections." 383 U. S. at 212.[7]

In *Preisler II*, the District Court (August 5, 1966), under threat that if the 1967 legislature did not comply "with the clear commands of both the Constitution of Missouri and the Constitution of the United States", indicated that "the inevitable and totally predictable result" would be that the court would decree an "at-large" election for Missouri's ten Congressmen. Proper respect for the equally constitutional division of our government into legislative, executive and judicial branches causes us to refrain from any *in terrorem* or declaratory and anticipatory comments. Nevertheless, the action taken by these courts is indicative that unreasonable delay will not be tolerated.

We are not inclined, tempting though it be, to play a game of redistricting chess wherein we would move towns and counties from one district to another until our conception of substantial equality would be achieved. Nevertheless, the thoughtful and well-reasoned opinion of the New Jersey Supreme Court suggesting this approach in *Jones* v. *Falcey, supra,* is indicative not only of a desire of the courts to be helpful but also of a willingness to disclose the various possibilities which might lead to constitutional success. Only failure, willful or otherwise, to heed the Supreme Court's mandates, could have led to the Roman numbers I, II and III, after the names of the cases cited herein which have resulted in constitutional rejection.

The New York legislature will reconvene in January 1968, unless it is called into special session earlier. Despite the many problems involved, there would seem to be no insuperable difficulty in making adjustments substantially to equalize the 41 congressional districts. Plaintiffs have submitted (Exhibit C to complaint) "A Possible Arrangement of New York State Congressional Districts

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[7] See note 5, *supra.*

under which No District Would Deviate in Population by more than 4.7% from State Average." They recognize that it is only a "possible" arrangement. As the many exhibits in the many reapportionment cases demonstrate, there are always a host of proffered solutions. The decision lies with the legislature. We note, however, the fact that there are six pairs of adjacent districts (five of the six in Kings County) with a population difference of over 100,000 and five such districts with a difference of between some 60,000 and 75,000 suggests a partial solution. There are also districts where the transferral of a single county as a unit to an adjacent district would greatly lessen the present district disparity.

The time table problem is seriously affected by the necessity for reasonably accurate population statistics. Presumably most, if not all, calculations in the various cases have been based on the 1960 United States census. There will not be another census until 1970. Assuming the figures will be available in 1971 and the number of seats allotted to New York is known, the earliest Congressional election under the new districts would be 1972.

Had the population remained static, the court could specify the 1960 census as a base. However, no court should blind itself to the world of today. To use 1960 figures in many areas would be to enforce the disparity of which plaintiffs complain. The population changes in Staten Island (Richmond County) since the opening of the Verrazzano Bridge and the influx into Nassau and Suffolk Counties particularly in the industrialized areas have been substantial.

Accuracy would call for a decree which would be based upon the 1970 census, knowledge of the number of congressional seats, and the immediate enactment in 1971 of a constitutional Act based upon the Supreme Court mandates, which Act would apply to the 1972 election of congressmen and which would retain jurisdiction in this court

as a forum before which the litigants could press alleged failures to proceed. Against this approach is the Supreme Court's impatience on February 25, 1966, in *Swann II, supra,* directing a valid plan for the 1966 elections. This followed that Court's remand on June 22, 1964 (*Swann I,* 378 U. S. 553) for reapportionment according to *Reynolds* and related cases. The 1965 Florida Legislature reapportioned but, as previously mentioned, the Supreme Court thought that the District Court, despite its declaration of unconstitutionality, was too liberal in giving the 1967 Legislature an opportunity to create a proper plan, and remanded for a plan effective for the 1966 elections. The 1966 Legislature tried again. This time the District Court held the plan to be constitutional. But the 30% (Senate) and the 40% (House) variations were too much of a strain for "as nearly as practicable" and "substantial equality" and again the Supreme Court reversed. Presumably, the 1968 Legislature will produce a plan.

Little guidance or help comes from these precedents. The easiest (for the court) solution is merely to direct the New York Legislature in 1968 to produce a constitutional plan. Let them use any available population figures they can muster; let them divide the State into 41 substantially equal parts, provided they be reasonably compact and contiguous. Let them deliberate as free and independent legislators so long as they do not allow considerations of race, sex, economic status or politics to cross their minds. Then, when their handiwork is complete and is presented to us, we will have an opportunity to tell them whether they have articulated acceptable reasons for such variations as may exist. With judicial guidelines as definite as they now are, our opinion of approval or disapproval should be filed before 1969 with Supreme Court summary action by early 1970.

Just as litigants seek compromises as the most expedient, if not the best, solution, so not infrequently the courts.

*Appendix A.*

Acting upon the assumption that accurate congressional representation (1972-1982) must await the 1970 census and upon the Supreme Court's understandable objection to protracted delay, a compromise may be in order. The 1968 and 1970 (even possibly the 1972) congressional elections ought to be held in districts far more equalized than they are at present. There are enough changes which can be superimposed on the present districts to cure the most flagrant inequalities. Furthermore, these changes may well survive the 1970 census and any alteration in number of seats. This hope may serve to dispel the objection: is it worthwhile to disarrange the present districts just for two (at most three) elections? Any rearrangement, of course, may be disturbing to the present incumbent. But no incumbent has a vested life interest in any fixed territory. Nor should any successor look forward to such a right. It is the people who are entitled to his enclave. If the districts are rearranged on a more equal basis, the court will take judicial notice that there will be no dearth of congressional candidates from each district, seeking by their voter blandishments to assure their prospective constituents that they will give them the best possible representation.

Therefore, alhough not unmindful of the risks and disturbances attendant to change, the court assumes this risk. Laws insofar as possible should not be retroactive. To declare that the acts of Congressmen and State legislators might have been tainted with illegality merely because they were elected from districts which we now hold fail to conform to constitutional requirements would be most unwise. Nor would such a holding advance plaintiffs' cause. We can, and do, say, however, that a plan must be created by the 1968 Legislature which will provide for congressional districts in conformity with the Supreme Court's precepts so that the people of the State of New York may vote for their congressmen from such districts in the 1968 con-

gressional elections. In so directing, we are following the pattern set by the Supreme Court in *Swann II, supra,* and in *Duddleston* v. *Grills,* 385 U. S. 455 (1967).

It is not for this court to dictate to the Legislature the methods whereby substantial equality is to be attained. It may be suggested, however, that population statistics as of December 31, 1966, might well be capable of reasonable ascertainment from various sources to which the Legislature would have access. Such current figures should tend to reflect the radical population changes in the areas where such changes have occurred. In the stable and rather static metropolitan districts, particularly in New York City where there are to be found many examples of the greatest disparity, 1960 census figures could be used. Even if perfection cannot be achieved between now and 1973, improvement is worth the effort.

This court retains jurisdiction of this action so that the parties hereto may in the future apply for such relief as may be warranted.

Settle judgment on notice.

LEONARD P. MOORE
USCJ

LLOYD F. MAC MAHON
USDJ

JOHN M. CANNELLA
USDJ

New York, N. Y.
May 10, 1967

## APPENDIX B

### Order of the District Court, dated July 26, 1967.

Defendants having moved this Court for an order dismissing the complaint herein, and the plaintiffs having moved for the convening of a Three Judge Bench, and the within matter having been referred to a Three Judge Statutory Bench by order of this Court dated the 24th day of October, 1966, and defendants having moved before the Three Judge Bench to dismiss the complaint herein, and plaintiffs having cross-moved for summary judgment, and the motions having been heard before the Three Judge Bench on November 17, 1966,

Now, on reading and filing the complaint herein, dated June 30, 1966, the affidavit of David I. Wells, dated August 29, 1966, the defendants' Notice of Motion to dismiss, and plaintiffs' cross-motion for summary judgment, and upon all the papers and proceedings heretofore had herein, and after hearing Isidore Levine, Esq., attorney for plaintiffs in support of plaintiffs' cross-motion, and Louis J. Lefkowitz, Attorney General of the State of New York, by George D. Zuckerman, Assistant Attorney General, of counsel, on behalf of the defendants, and after filing the decision of this Court dated May 10, 1967, it is

ORDERED, ADJUDGED AND DECREED, that defendants' motion to dismiss be denied in all respects, and it is further

ORDERED, ADJUDGED AND DECREED, that plaintiffs' cross-motion for summary judgment be granted in all respects, and it is further

ORDERED, ADJUDGED AND DECREED, that Chapter 980 of the Laws of 1961, of the State of New York, effective January 1, 1962, is void and invalid as being contrary to Article I, Section 2 of the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States, in that the Congressional districts established by such section and Chapter are not of substantial equality in

population, and in that the State has not proven that the many variations in district populations established by Chapter 980 are unavoidable or are explained or justified upon any legally acceptable ground, and it is further

ORDERED, ADJUDGED AND DECREED, that the Legislature of the State of New York (as well as any delegated authority, which may be duly constituted in the future to draw any Congressional districting plan in New York State), be and is hereby directed to enact into law a Congressional districting plan, effective no later than March 1, 1968, which districting plan shall be in conformity with the redistricting principles as set forth in the applicable decisions of the Supreme Court and/or such Congressional enactments as may be in force with respect thereto; and it is further

ORDERED, ADJUDGED AND DECREED, that the delineation of such Congressional districts be not based upon considerations of race, sex or economic status, and it is further

ORDERED, ADJUDGED AND DECREED, that pending compliance with the within order, this Court retain jurisdiction over all of the parties herein so that any party may in the future apply for such relief as may be warranted.

/s/ LEONARD P. MOORE
U.S.C.J.

/s/ LLOYD F. MAC MAHON
U.S.D.J.

/s/ JOHN M. CANNELLA
U.S.D.J.

July 26, 1967
Judgment entered 7/27/67

/s/ John J. Olear, Jr.,
Clerk

## APPENDIX C

**The 1961 New York Congressional Districting Statute, State Law § 111:**

§ 111. New congressional districts

Except as provided in section one hundred ten, the congressional districts of this state from and after the time this article takes effect, shall consist as follows:

FIRST. The First Congressional District shall consist of that part of the County of Suffolk consisting of the Towns of Smithtown, Islip, Brookhaven, Riverhead, South Hampton, Southold, East Hampton, Shelter Island, Gardiner's Island, Fisher's Island, Shinnecock Indian Reservation and all Islands within the above mentioned Townships.

(Population 1960 Federal Census 398,254)

SECOND. The Second Congressional District shall consist of that part of the County of Suffolk consisting of the Towns of Huntington and Babylon, also that part of the County of Nassau described as follows: Beginning at a point in the Town of Oyster Bay where the Northern State Parkway intersects the dividing line between the County of Suffolk and the County of Nassau, thence Westerly along Northern State Parkway to the Wantagh Oyster Bay Expressway, thence Southerly to Phipps Lane, to Wallace Drive (Edgemere Road), to Southern Parkway, to Wantagh Oyster Bay Expressway, to old Country Road, to Farmers Plain Avenue (Grohman Road), to Plain Hay Path, to Plainview Road, to Bethpage State Parkway, to Central Park Avenue, to Bethpage State Parkway, to Southern State Parkway, to a point where Southern State Parkway and the Northwest village line of the Village of Massapequa Park intersects, thence Southerly along said village line of the Village of Massapequa Park to Jerusalem

Avenue, thence Westerly along Jerusalem Avenue to the dividing line between the Town of Oyster Bay and the Town of Hempstead, thence Southerly along said dividing line to the waters of the Atlantic Ocean, thence Easterly through the waters of the Atlantic Ocean to the dividing line between the County of Nassau and the County of Suffolk, thence Northerly along the dividing line between the County of Nassau and the County of Suffolk to the place of beginning.

(Population 1960 Federal Census 371,950)

THIRD. The Third Congressional District shall consist of that part of the County of Nassau described as follows: Beginning at a point in the Town of Oyster Bay where the Northern State Parkway intersects the dividing line between the County of Suffolk and the County of Nassau, thence Westerly along Northern State Parkway to the Wantagh Oyster Bay Expressway, thence Southerly to Phipps Lane, to Wallace Drive (Edgemere Road), to Southern Parkway, to Wantagh Oyster Bay Expressway, to Old Country Road, to Farmers Plain Avenue (Grohman Road), to Plain Hay Path, to Plainview Road, to Bethpage State Parkway, to Bethpage Turnpike (Hempstead Turnpike), thence Westerly along Bethpage Turnpike (Hempstead Turnpike) to the intersection of Bethpage Turnpike (Hempstead Turnpike) and the town line of Oyster Bay and the town line of Hempstead, thence Northerly, Westerly and Northwesterly along the town lines of the Town of Oyster Bay and the Town of Hempstead and said town lines of the Town of Oyster Bay and the Town of North Hempstead extended to the waters of Hempstead Harbor, thence through the waters of Hempstead Harbor, Long Island Sound, Cold Spring Harbor to the Northern dividing line between the County of Suffolk and the County of

Nassau and thence Southerly along said dividing line between the County of Suffolk and the County of Nassau to the place of beginning, also including the Town of North Hempstead and the City of Glen Cove.

(Population 1960 Federal Census 399,967)

FOURTH. The Fourth Congressional District shall consist of that part of the County of Nassau, townships of Hempstead and Oyster Bay, described as follows: Beginning at a point where the village line of the Village of Valley Stream intersects the County Line of the County of Queens and the County of Nassau, thence Easterly along the Village of Valley Stream's Northern boundary, to the Westerly boundary of the Village of Malverne, thence Northerly and Easterly along said boundary of the Village of Malverne to Southern State Parkway, thence Easterly along Southern State Parkway to Jerusalem Avenue to the Westerly border line of the Village of Massapequa Park, thence Northerly along said village line to Southern State Parkway, thence Westerly to Bethpage State Parkway, to Bethpage Turnpike (Hempstead Turnpike), thence Westerly along Bethpage Turnpike (Hempstead Turnpike) to the town line of the Town of Oyster Bay and the Town of Hempstead, thence Northerly and Westerly along the town line of Oyster Bay, the Town of Hempstead, and the Town of North Hempstead, to the dividing line between the Town of Hempstead, the Town of North Hempstead, the County of Nassau and the County of Queens, thence Southerly along the dividing line of the County of Nassau and the County of Queens to the place of beginning.

(Population 1960 Federal Census 394,494)

FIFTH. The Fifth Congressional District shall consist of that part of the Town of Hempstead described as fol-

lows: Beginning at a point where the village line of the Village of Valley Stream intersects the County Line of the County of Queens and the County of Nassau, thence Easterly along the Village of Valley Stream's Northern boundary, to the Westerly boundary of the Village of Malverne, thence Northerly and Easterly along said boundary of the Village of Malverne to Southern State Parkway, thence Easterly along Southern State Parkway to Jerusalem Avenue and the dividing line between the Town of Oyster Bay and the town line of the Town of Hempstead, thence Southerly along said dividing line of the Town of Oyster Bay and the Town of Hempstead, to the Atlantic Ocean, and thence through the waters of the Atlantic Ocean, Reynolds' Channel, to the dividing line between the County of Nassau and the County of Queens, thence Northerly along said dividing line between the County of Nassau and the County of Queens to the place of beginning, also the City of Long Beach.

(Population 1960 Federal Census 402,290)

SIXTH. The Sixth Congressional District shall consist of that part of the County of Queens beginning at a point where Linden Boulevard intersects the county line between Queens County and Nassau County, thence Westerly along Linden Boulevard to Springfield Boulevard to Murdock Avenue, to Colfax Street, to Hollis Avenue, to Jamaica Avenue, to Merrick Boulevard, to Archer Avenue, to VanWyck Expressway, to Atlantic Avenue, to One Hundred Twenty Seventh Street, to Atlantic Avenue, to Woodhaven Boulevard, to Park Lane South, to Ninety Eighth Street (Diamond Street), to Woodhaven Boulevard, to Myrtle Avenue, to Eightieth Street, to Metropolitan Avenue, to Sixty Ninth Avenue, to Burns Street, to Union Turnpike, to Queens Boulevard, to Main Street, to

Eighty Fifth Drive, to One Hundred Forty Fourth Street, to Eighty Fifth Avenue, to One Hundred Forty Eighth Street to Eighty Fourth Drive, to Smedley Street, to Grand Central Parkway, to One Hundred Sixty Fourth Street, to Union Turnpike, thence Easterly along Union Turnpike to Hollis Court Boulevard, to Richland Avenue, to Peck Avenue, to Bell Boulevard, to Kingsbury Avenue, to Springfield Boulevard, to Sixty Ninth Avenue, to Cloverdale Boulevard, to Horace Harding Expressway, thence Westerly along Horace Harding Expressway to Peck Avenue, to Fresh Meadow Lane, to North Hempstead Turnpike, to Main Street, to Horace Harding Expressway, to Rodman Street, thence Northerly along Rodman Street to North Hempstead Turnpike, and One Hundred Thirty Third Street, thence along One Hundred Thirty Third Street to Elder Avenue, to Peck Avenue, to Main Street, to Elder Avenue, to Kissena Boulevard, to Forty Fifth Avenue, to Parsons Boulevard, thence Northerly to Bayside Avenue, thence Easterly along Bayside Avenue to Bayside Lane, to Francis Lewis Boulevard, to Twenty Fourth Road, to Utopia Parkway, to Twenty Fourth Avenue, to Two Hundred First Street, to Twenty Third Avenue, to Two Hundred Seventh Street, to Twenty Sixth Avenue, to Bell Boulevard, to Twenty Fourth Avenue, thence Easterly along Twenty Fourth Avenue and Twenty Fourth Avenue extended to and through the waters of Little Neck Bay to the county line between Queens County and Nassau County, thence Southerly along said county lines of the County of Queens and the County of Nassau to the place of beginning.

(Population 1960 Federal Census 416,600)

SEVENTH. The Seventh Congressional District shall consist of that part of the County of Queens beginning at a point where Linden Boulevard intersects the county line

between Queens County and Nassau County, thence Westerly along Linden Boulevard to Springfield Boulevard, to Murdock Avenue, to Colfax Street, to Hollis Avenue, to Jamaica Avenue, to Merrick Boulevard, to Archer Avenue, to VanWyck Expressway, to Atlantic Avenue, to One Hundred Twenty Seventh Street, to Atlantic Avenue, to Woodhaven Boulevard, to Park Lane South, to Ninety Eighth Street (Diamond Street), to Woodhaven Boulevard, to Myrtle Avenue, to Eightieth Street, to Cooper Avenue, to Seventy Third Place, to Metropolitan Avenue, to Seventy Fourth Street, to Juniper Boulevard South, to Seventy First Street, to Lutheran Avenue, to the intersection of Eliot Avenue, Lutheran Avenue and Seventy Fifth Street, thence along Seventy Fifth Street, to Caldwell Avenue, to Seventy First (Mazeau) Street, to Midtown Highway, to Grand Avenue, thence Westerly along Grand Avenue to the dividing line between Queens County and Kings County and thence Southerly along said dividing line to the waters Jamaica Bay, thence Easterly through the waters of Jamaica Bay, Grassy Bay and Head of Bay Inlet to the dividing line between the County of Queens and County of Nassau, thence Northerly along said dividing line to the place of beginning.

(Population 1960 Federal Census 457,124)

EIGHTH. The Eighth Congressional District shall consist of that part of Queens County beginning at a point where Twenty Third Avenue extended intersects the waters of Flushing Bay, thence Southwesterly along Twenty Third Avenue extended and Twenty Third Avenue to Grand Central Parkway, to Ninety Fourth Street, to Thirtieth Avenue, to Ninety Third Street, to Northern Boulevard, to Junction Boulevard, to Fifty Seventh Avenue, to Ninety Ninth Street, to Sixty Third Road, to the intersection of Junction Boulevard, Queens Boulevard,

*Appendix C.*

Sixty Third Road and Sixty Third Drive, thence Northwesterly along Queens Boulevard to Fifty First Avenue, to Sixty Ninth Street, to the intersection of Midtown Highway, Grand Avenue and Sixty Ninth Street, thence along Midtown Highway to Seventy First (Mazeau) Street, to Caldwell Avenue, to Seventy Fifth Street, to the intersection of Eliot Avenue, Seventy Fifth Street and Lutheran Avenue, thence Southerly along Lutheran Avenue, to Seventy First Street, to Juniper Boulevard South, to Seventy Fourth Street, to Metropolitan Avenue, to Seventy Third Place, to Cooper Avenue, to Eightieth Street, to Metropolitan Avenue, to Sixty Ninth Avenue, to Burns Street, to Union Turnpike, to Queens Boulevard, to Main Street, to Eighty Fifth Drive, to One Hundred Forty Fourth Street, to Eighty Fifth Avenue, to One Hundred Forty Eighth Street, to Eighty Fourth Drive, to Smedley Street, to Grand Central Parkway, to One Hundred Sixty Fourth Street, to Union Turnpike, thence Easterly along Turnpike to Hollis Court Boulevard, to Richland Avenue, to Peck Avenue, to Bell Boulevard, to Kingsbury Avenue, to Springfield Boulevard, to Sixty Ninth Avenue, to Cloverdale Boulevard, to Horace Harding Expressway, thence Westerly along Horace Harding Expressway to Peck Avenue, to Fresh Meadow Lane, to North Hempstead Turnpike, to Main Street, to Horace Harding Expressway, to Rodman Street, thence Northerly along Rodman Street to the intersection of North Hempstead Turnpike, and One Hundred Thirty Third Street, thence along One Hundred Thirty Third Street to Elder Avenue, to Peck Avenue, to Main Street, to Elder Avenue, to Kissena Boulevard, to Forty Fifth Avenue, to Parsons Boulevard, thence Northerly to Bayside Avenue, thence Easterly along Bayside Avenue to Bayside Lane, to Francis Lewis Boulevard, to Twenty Fourth Road, to Utopia Parkway, to Twenty Fourth Avenue, to Two Hundred First Street, to Twenty Third Avenue, to Two Hundred

Seventh Street, to Twenty Sixth Avenue, to Bell Boulevard, to Twenty Fourth Avenue, thence Easterly along Twenty Fourth Avenue and Twenty Fourth Avenue extended to and through the waters of Little Neck Bay to the county line between Queens County and Nassau County, thence Northerly through the waters of Little Neck Bay, East River and Flushing Bay to the place of beginning.

(Population 1960 Federal Census 438,192)

NINTH. The Ninth Congressional District shall consist of that part of Queens County beginning at a point where Twenty Third Avenue extended intersects the waters of Flushing Bay, thence Southwesterly along Twenty Third Avenue extended and Twenty Third Avenue, to Grand Central Parkway, to Ninety Fourth Street, to Thirtieth Avenue, to Ninety Third Street, to Northern Boulevard, to Junction Boulevard, to Fifty Seventh Avenue, to Ninety Ninth Street, to Sixty Third Road, to the intersection of Junction Boulevard, Queens Boulevard, Sixty Third Road and Sixty Third Drive, thence Northwesterly along Queens Boulevard to Fifty First Avenue, to Sixty Ninth Street, to the intersection of Midtown Highway, Grand Avenue and Sixty Ninth Street, thence Westerly along Grand Avenue to the dividing line between the County of Queens and the County of Kings, thence Northerly along said dividing line between the County of Queens and the County of Kings to Newtown Creek, to East River, to East Channel, to Hell Gate, to Riker's Island Channel, to East River and Flushing Bay to the place of beginning.

(Population 1960 Federal Census 426,771)

TENTH. The Tenth Congressional District shall consist of that part of Queens County beginning at a point where the county line of the County of Kings and the County of

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Queens are intersected by Rockaway Inlet, thence Easterly and Northerly along said county line of the County of Kings and the County of Queens to a point where said county line of the County of Kings and the County of Queens are intersected by the waters of Jamaica Bay and Grassy Bay, thence Easterly through the waters of Jamaica Bay, Grassy Bay and Mott Basin to the dividing line between the County of Queens and the County of Nassau, thence Easterly and Southerly along said dividing line of the County of Queens and the County of Nassau to the waters of the Atlantic Ocean, thence Westerly through the waters of the Atlantic Ocean and Rockaway Inlet to the place of beginning; also that part of the Borough of Brooklyn, County of Kings, beginning at a point where Flatbush Avenue extended Southward intersects the waters of Rockaway Inlet, thence Northwesterly along Flatbush Avenue extended and Flatbush Avenue to Fillmore Avenue, to Avenue T, to East Sixty Ninth Street, to Avenue K, to Ralph Avenue, thence Southerly to Avenue M, to East Fifty Eight Street, to Avenue L, to East Forty Fifth Street, to Avenue K, to Troy Avenue, to Avenue H, to Schenectady Avenue, to Glenwood Road, to East Forty Sixth Street, to Farragut Road, to Schenectady Avenue, to Foster Avenue, to East Forty Fifth Street, to Avenue D, to Troy Avenue, to Cortelyou Road, to Schenectady Avenue, to Church Avenue, to East Fifty Third Street, to Linden Boulevard, to East Fifty Second Street, to Lenox Road, to Utica Avenue, to Winthrop Street, to Schenectady Avenue, to Lefferts Avenue, to Troy Avenue, to East New York Avenue, to Albany Avenue, to Empire Boulevard, to Troy Avenue, to Eastern Parkway, to Albany Avenue, to St. Johns Place, to Kingston Avenue, to Atlantic Avenue, to Brooklyn Avenue, to Fulton Street, to Marcy Avenue, to Monroe Street, to Bedford Avenue, to Myrtle Avenue, to Broadway, to Lafayette Avenue, to Stuyvesant

Avenue, to Fulton Street, to Stone Avenue, to East New York Avenue, to Hopkinson Avenue, to East Ninety Eighth Street, to Ditmas Avenue, to Rockaway Parkway, thence along Rockaway Parkway and Rockaway Parkway extended, to the waters of Jamaica Bay, thence Southerly and Westerly through the waters of Jamaica Bay to the place of beginning, also including the islands in Jamaica Bay within the Borough of Brooklyn.

Kings Part—353,726 Queens Part—70,891

(Population 1960 Federal Census 424,617)

ELEVENTH. The Eleventh Congressional District shall consist of that part of the Borough of Boooklyn, County of Kings, beginning at a point where Stockholm Street intersects the dividing line between the County of Kings and the County of Queens, thence Southwesterly along Stockholm Street, to Wilson Avenue, to DeKalb Avenue, to Evergreen Avenue, to Stockholm Street, to Bushwick Avenue, to Kossuth Place, to Lafayette Avenue, to Stuyvesant Avenue, to Fulton Street, to Stone Avenue, to East New York Avenue, to Hopkinson Avenue, to East Ninety Eighth Street, to Ditmas Avenue, to Rockaway Parkway, thence along Rockaway Parkway and Rockaway Parkway extended, to the waters of Jamaica Bay, thence Easterly thruogh the waters of Jamaica Bay to the dividing line between the County of Kings and the County of Queens, then Northerly and Westerly along side dividing line as it twists and turns to the place of beginning.

(Population 1960 Federal Census 403,628)

TWELFTH. The Twelfth Congressional District shall consist of that part of the Borough of Brooklyn, County of Kings, beginning at a point where Twenty Third Avenue,

Avenue M, and Dahill Road intersect, thence Northerly along Dahill Road to Fifty Eighth Street, to Eighteenth Avenue, to Fifty Ninth Street, to Fort Hamilton Parkway, to Fifty First Street, to Eighth Avenue, to Thirty Seventh Street, to Fort Hamilton Parkway, to McDonald Avenue (Gravesend Avenue), to Greenwood Avenue, to Prospect Park Southwest, to Parkside Avenue, to Ocean Avenue, to Washington Avenue, to Eastern Parkway, to Underhill Avenue, to Prospect Place, to Vanderbilt Aveneu, to Atlantic Avenue, to Cumberland Street, to Green Avenue, to Vanderbilt Avenue, to Gates Avenue, to Washington Avenue, to Lafayette Avenue, to Bedford Avenue, to Monroe Street, to Marcy Avenue, to Fulton Street, to Brooklyn Avenue, to Atlantic Avenue, to Kingston Avenue, to St. Johns Place, to Albany Avenue, to Eastern Parkway, to Troy Avenue, to Empire Boulevard, to Albany Avenue, to East New York Avenue, to Troy Avenue, to Lefferts Avenue, to Schenectady Avenue, to Winthrop Street, to Utica Avenue, to Lenox Road, to East Fifty Second Street, to Linden Boulevard, to East Fifty Third Street, to Church Avenue, to Schenectady Avenue, to Cortelyou Road, to Canarsie Avenue, to Tilden Avenue, to Flatbush Avenue, to Beverly Road, to Coney Island Avenue, to Ditmas Avenue, to Flatbush Avenue, to Newkirk Avenue, to Brooklyn Avenue to Foster Avenue, to East Thirty Seventh Street, to Farragut Road, thence Westerly to Flatbush Avenue, to Glenwood Road, to Nostrand Avenue, to Avenueo K, to East Fifteenth Street, to Avenue L, to Coney Island Avenue, to Avenue K, to East Ninth Street, to Avenue M, thence Westerly to the place of beginning.

(Population 1960 Federal Census 469,908)

THIRTEENTH. The Thirteenth Congressional District shall consist of that part of the Borough of Brooklyn, County of

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Kings, beginning at a point where Plumb First Street extended intersects the waters of Sheepshead Bay, thence Northerly along Plumb First Street extended to Emmons Avenue, to Bedford Avenue, to Shore Parkway, to Bragg Street, to Avenue W, to Knapp Street, to Whitney Avenue, to Gerritsen Avenue, to Avenue U, to East Twenty Eighth Street, to Avenue T, to East Twenty Seventh Street, to Avenue S, to Brown Street, to Gerritsen Avenue, to Nostrand Avenue, to Kings Highway, to East Twenty Ninth Street, to Avenue K, to East Fifteenth Street, to Avenue L, to Coney Island Avenue, to Avenue K, to East Ninth Street, to Avenue M, to Dahill Road, to Fifty Eighth Street, to Eighteenth Avenue, to Fifty Ninth Street, to New Utrecht Avenue, to Fourteenth Avenue, to Seventy First Street, to Sixteenth Avenue, to Eighty Sixth Street, to Bay Eighth Street, thence Southerly along Bay Eighth Street and Bay Eighth Street exenteded to the waters of Gravesend Bay, thence Southerly and Easterly through the waters of Gravesend Bay, Lower Bay, Rockaway Inlet, Sheepshead Bay, to the place of beginning.

(Population 1960 Federal Census 454,285)

FOURTEENTH: The Fourteenth Congressional District shall consist of that part of the Borough of Brooklyn, County of Kings, beginning at a point where Bayridge Avenue extended Westward intersetcs the waters of The Narrows, thence Easterly along Bayridge Avenue extended and Bayridge Avenue to Shore Parkway, thence Northerly along Shore Parkway to Ridge Boulevard, to Second Avenue, thence Northerly along Second Avenue to Sixty Fifth Street, to Third Avenue, to Sixtieth Street, to Fourth Avenue, to Twenty Fourth Street, to Fifth Avenue, to Prospect Expressway, to Fourth Avenue, to Ninth Street, to Fifth Avenue, to Carroll Street, to Sixth Avenue, to Pros-

pect Place, to Fifth Avenue, to St. Marks Place, to Fourth Avenue, to Flatbush Avenue, to State Street, to Hicks Street, to Joralemon Street, to the center line of the Brooklyn-Queens connecting highway, to Cranberry Street, to Fulton Street, to Prospect Street, to Pearl Street, to New Street, to Jay Street, to Fulton Street, to DeKalb Avenue, to South Oxford Street, to Lafayette Avenue, to Vanderbilt Avenue, to DeKalb Avenue, to Washington Avenue, to Lafayette Avenue, to Bedford Avenue, thence along Bedford Avenue, to Myrtle Avenue, thence Easterly along Myrtle Avenue to Broadway, to the intersection of Lafayette Avenue, Broadway and Kossuth Place, thence Northerly along Kossuth Place to Bushwick Avenue, to Stockholm Street, to Evergreen Avenue, to DeKalb Avenue, to Wilson Avenue, to Stockholm Street, to the dividing line between the County of Kings and the County of Queens, thence Northerly along said dividing line of the County of Kings and the County of Queens to the waters of Newtown Creek, the East River, Buttermilk Channel, Upper Bay, Gowanus Bay and The Narrows to the place of beginning.

(Population 1960 Federal Census 465,889)

FIFTEENTH. The Fifteenth Congressional District shall consist of that part of the Borough of Brooklyn, County of Kings, beginning at a point where Bayridge Avenue extended Westward intersects the waters of The Narrows, thence Easterly along Bayridge Avenue extended and Bayridge Avenue, to Shore Parkway, thence Northerly along Shore Parkway to Ridge Boulevard, to Second Avenue, thence Northerly along Second Avenue to Sixty Fifth Street, to Third Avenue, to Sixtieth Street, to Fourth Avenue, to Twenty Fourth Street, to Fifth Avenue, to Prospect Expressway, to Fourth Avenue, to Ninth Street, to Fifth Avenue, to Carroll Street, to Sixth Avenue, to Prospect

Place, to Fifth Avenue, to St. Mark's Place, to Fourth Avenue, to Flatbush Avenue, to State Street, to Hicks Street, to Joralemon Street, to the center line of the Brooklyn-Queens connecting highway, to Cranberry Street, to Fulton Street, to Prospect Street, to Pearl Street, to New Street, to Jay Street, to Fulton Street, to DeKalb Avenue, to South Oxford Street, to Lafayette Avenue, to Vanderbilt Avenue, to DeKalb Avenue, to Washington Avenue, to Gates Avenue, to Vanderbilt Avenue, to Green Avenue, to Cumberland Street, to Atlantic Avenue, to Vanderbilt Avenue, to Prospect Place, to Underhill Avenue, to Eastern Parkway, to Washington Avenue, to the intersection of Washington Avenue, Empire Boulevard and Ocean Avenue, thence Westerly and Southerly along Ocean Avenue, to Parkside Avenue, to Prospect Park Southwest, to Greenwood Avenue, to McDonald Avenue (Gravesend Avenue), to Fort Hamilton Parkway, to Thirty Seventh Street, to Eighth Avenue, to Fifty First Street, to Fort Hamilton Parkway, to Fifty Ninth Street, to New Utrecht Avenue, to Fourteenth Avenue, to Seventy First Street, to Sixteenth Avenue, to Eighty Sixth Street, to Bay Eighth Street, thence Southerly along Bay Eighth Street and Bay Eighth Street extended to the waters of Gravesend Bay, thence Northwesterly through the waters of Gravesend Bay and The Narrows to the place of beginning.

(Population 1960 Federal Census 349,850)

SIXTEENTH. The Sixteenth Congressional District shall consist of that part of the Borough of Brooklyn, County of Kings, beginning at a point where Flatbush Avenue extended Southward intersects the waters of Rockaway Inlet, thence Northwesterly along Flatbush Avenue extended and Flatbush Avenue to Fillmore Avenue, to Avenue T, to East Sixty Ninth Street, to Ralph Avenue, thence South-

erly to Avenue M, to East Fifty Eighth Street, to Avenue L, to East Forty Fifth Street, to Avenue K, to Troy Avenue, to Avenue H, to Schenectady Avenue, to Glenwood Road, to East Forty Sixth Street, to Farragut Road, to Schenectady Avenue, to Foster Avenue, to East Forty Fifth Street, to Avenue D, to Troy Avenue, to Cortelyou Road, to Canarsie Avenue, to Tilden Avenue, to Flatbush Avenue, to Beverly Road, to Coney Island Avenue, to Ditmas Avenue, thence Easterly to Flabush Avenue, to Newkirk Avenue, to Brooklyn Avenue, to Foster Avenue, to East Thirty Seventh Street, to Farragut Road, to Flatbush Avenue, to Glenwood Road, to Nostrand Avenue, to Avenue K, to East Twenty Ninth Street, to Kings Highway, to Nostrand Avenue, to Gerritsen Avenue, to Brown Street, to Avenue S, to East Twenty Seventh Street, to Avenue T, to East Twenty Eighth Street, to Avenue U, to Gerritsen Avenue, to Whitney Avenue, to Knapp Street, to Avenue W, to Bragg Street, to Shore Parkway, to Bedford Avenue, to Emmons Avenue, thence Easterly along Emmons Avenue to Plumb First Street, thence Southerly along Plumb First Street and Plumb First Street extended to the waters of Sheepshead Bay and through the waters of Sheepshead Bay and Rockaway Inlet to the place of beginning, also the County of Richmond and the Islands therein.

(Population 1960 Federal Census 352,024)

Kings County—130,033 County of Richmond—221,991

SEVENTEENTH. The Seventeenth Congressional District shall consist of that part of New York County described as follows: Beginning at a point where East Fourteenth Street extended intersects the waters of the East River, thence Westerly along East Fourteenth Street extended

and East Fourteenth Street to First Avenue, to East Nineteenth Street, to Third Avenue, through Cooper's Square, to the Bowery, to Great Jones Street (West Third Street), to The Avenue of the Americas (Sixth Avenue), to West Fourth Street, to Christopher Street, to Bleecker Street, to Abbington Square, thence Northerly along Eighth Avenue, to West Fourteenth Street, to Seventh Avenue, to West Thirty Fourth Street, to Eighth Avenue, to West Fifty Fourth Street, to Ninth Avenue, thence Northerly along Ninth Avenue and Columbus Avenue, to West Seventy Third Street, to Central Park West, to the intersection of Cathedral Parkway, Central Park West and West One Hundred Tenth Street, thence Easterly along West One Hundred Tenth Street to Fifth Avenue, thence Southerly along Fifth Avenue to East Ninety Eighth Street, to Madison Avenue, to East Ninety Seventh Street, to Park Avenue, to East Ninety Sixth Street, to Lexington Avenue, to East Ninety First Street, to Third Avenue, to East Eighty Ninth Street, to East End Avenue, thence Northerly along East End Avenue and East End Avenue extended to the waters of the East River, thence through the waters of the East River and the East River Channel to the place of beginning including Welfare Island.

(Population 1960 Federal Census 382,320)

EIGHTEENTH. The Eighteenth Congressional District shall consist of that part of New York County described as follows: Beginning at a point where West One Hundred Sixty Fifth Street extended Easterly intersects the waters of the Harlem River, thence Westerly along West One Hundred Sixty Fifth Street extended and West One Hundred Sixty Fifth Street to Edgecombe Avenue, to St. Nicholas Place, to West One Hundred Fiftieth Street, to Amsterdam Avenue, thence Southerly along Amsterdam Avenue to

West One Hundred Twenty Second Street, to Morningside Drive, to Cathedral Parkway, thence Easterly along Cathedral Parkway and West One Hundred Tenth Street to Fifth Avenue, thence Southerly along Fifth Avenue to East Ninety Eighth Street, to Madison Avenue, to East Ninety Seventh Street, to Park Avenue, to East Ninety Sixth Street, to Lexington Avenue, to East Ninety First Street, to Third Avenue, to East Eighty Ninth Street, to East End Avenue, thence Northerly along East End Avenue and East End Avenue extended to the waters of the Harlem River and through the waters of the Harlem River, Hell Gate, East River, Harlem River, to the place of beginning, including Randalls Island, Ward's Island and Mill Rock.

(Population 1960 Federal Census 431,330)

NINETEENTH. The Nineteenth Congressional District shall consist of that part of New York County described as follows: Beginning at a point where East Fourteenth Street extended intersects the waters of the East River, thence Westerly along East Fourteenth Street extended and East Fourteenth Street, to First Avenue, to East Nineteenth Street, to Third Avenue, through Cooper's Square to the Bowery, to Great Jones Street (West Third Street), to The Avenue of the Americas (Sixth Avenue), to West Fourth Street, to Christopher Street, to Bleecker Street, to Abbington Square, thence Northerly along Eighth Avenue, to West Fourteenth Street, to Seventh Avenue, to West Thirty Fourth Street, to Eighth Avenue, to West Fifty Fourth Street, to Ninth Avenue, thence Northerly along Ninth Avenue and Columbus Avenue, to West Seventy Third Street, to Central Park West, to West Eighty Sixth Street, thence Westerly along West Eighty Sixth Street and West Eighty Sixth Street extended to the waters of the Hudson River, thence Southerly through the waters of the Hudson

River, New York Bay, Buttermilk Channel, the East River to the place of beginning, including Governor's Island, Bedloe's Island and Ellis Island.

(Population 1960 Federal Census 445,175)

TWENTIETH. The Twentieth Congressional District shall consist of that part of New York County beginning at a point where West One Hundred Sixty Fifth Street extended Easterly intersects the waters of the Harlem River, thence Westerly along West One Hundred Sixty Fifth Street extended and West One Hundred Sixty Fifth Street to Edgecombe Avenue, to St. Nicholas Place, to West One Hundred Fiftieth Street, to Amsterdam Avenue, thence Southerly along Amsterdam Avenue to West One Hundred Twenty Second Street, to Morningside Drive, to Cathedral Parkway, to Central Park West, to West Eighty Sixth Street, thence along West Eighty Sixth Street extended to the waters of the Hudson River, thence Northerly through the waters of the Hudson River, Harlem River, to the dividing line between the County of Bronx and the County of New York, thence Northerly, Easterly and Southerly along said dividing line to the waters of the Harlem River, thence Southerly through the waters of the Harlem River to the place of beginning.

(Population 1960 Federal Census 439,456)

TWENTY FIRST. The Twenty First Congressional District shall consist of that part of the County of Bronx beginning at a point where East One Hundred Fortieth Street extended Eastward intersects the waters of the East River, thence Westerly along East One Hundred Fortieth Street extended and East One Hundred Fortieth Street to Locust Avenue, to East One Hundred Forty First Street, to St. Ann's Avenue, to East One Hundred Fifty Ninth Street,



to Eagle Avenue, to East One Hundred Sixty Third Street, to Third Avenue, to East One Hundred Sixty Seventh Street, to Fulton Avenue, to Cross Bronx Expressway, thence Westerly along the Cross Bronx Expressway, to Grand Concourse, to East One Hundred Eighty First Street, thence Westerly along East One Hundred Eighty First Street, and West One Hundred Eighty First Street, to University Avenue, thence Southerly along University Avenue, to West Burnside Aveune, to Sedgwick Avenue, to West Tremont Avenue, thence Westerly along West Tremont Avenue and West Tremont Avenue extended to the waters of the Harlem River, thence Southerly and Easterly through the waters of the Harlem River and the East River to the place of beginning.

(Population 1960 Federal Census 361,770)

TWENTY SECOND. The Twenty Second Congressional District shall consist of that part of the County of Bronx beginning at a point where East One Hundred Fortieth Street extended Eastward intersects the waters of the East River, thence Westerly along East One Hundred Fortieth Street extended and East One Hundred Fortieth Street to Locust Avenue, to East One Hundred Forty First Street, to St. Ann's Avenue, to East One Hundred Fifty Ninth Street, to Eagle Avenue, to East One Hundred Sixty Third Street, to Third Avenue, to East One Hundred Sixty Seventh Street, to Fulton Avenue, to Cross Bronx Expressway, thence Westerly along the Cross Bronx Expressway, to Grand Concourse, thence Northerly along the Grand Concourse to East Tremont Avenue, thence Easterly along East Tremont Avenue to Bronx Park Avenue, to East One Hundred Seventy Seventh Street, thence Easterly to the intersection of East One Hundred Seventy Seventh Street, Bronx River Parkway Southerly extension and Cross Bronx Expressway, thence

Easterly along the Cross Bronx Expressway, to Beach Avenue, to Mansion Street, to St. Lawrence Avenue, to East Tremont Avenue, to White Plains Road, thence Southerly along White Plains Road, to Westchester Avenue, to and Southerly around Hugh J. Grant Circle to Westchester Avenue, to Olmstead Avenue, to Newbold Avenue, to the intersection of Newbold Avenue, Cross Bronx Expressway and Pugsley Avenue, thence Easterly along Cross Bronx Expressway to Gleason Avenue, thence Westerly along Gleason Avenue to Beach Avenue, to Watson Avenue, to Leland Avenue, to Bruckner Boulevard North, to White Plains Road, to Bruckner Boulevard South, to Olmstead Avenue, to Quimby Avenue, to Pugsley Avenue, to Seward Avenue, to Castle Hill Avenue, to Cincinnatus Avenue, to Havemeyer Avenue, to Lacombe Avenue, to Newman Avenue, to Seward Avenue, to Thieriot Avenue, to Lafayette Avenue, to Rosedale Avenue, to Randall Avenue, to Commonwealth Avenue, to Lacombe Avenue, thence Westerly along Lacombe Avenue to Bronx River Parkway, to Randall Avenue and Randall Avenue extended Westerly and Southerly to the waters of the Bronx River, thence Southerly and Westerly through the waters of the Bronx River and East River to the place of beginning, also including North Brother Island, South Brother Island and Riker's Island.

(Population 1960 Federal Census 355,847)

TWENTY THIRD. The Twenty Third Congressional District shall consist of that part of the County of Bronx beginning at a point where the Major Deegan Expressway intersects the dividing line between the County of Bronx and the County of Westchester, thence Southerly along Major Deegan Expressway to East Two Hundred Thirty Third Street, to Webster Avenue, to East Gun Hill Road, to Reservoir Place, to Reservoir Oval East, to

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Bainbridge Avenue, to East Mosholu Parkway South, to East Two Hundred Fourth Street, to Villa Avenue, to Van Cortlandt Avenue, to Jerome Avenue, thence Southerly along Jerome Avenue, to Bedford Park Boulevard, to the Grand Concourse, to East One Hundred Ninety Ninth Street, to Valentine Avenue, to East One Hundred Ninety Seventh Street, to Briggs Avenue, to East Kingsbridge Road, to East Fordham Road, thence Easterly along East Fordham Road to Washington Avenue, thence Southerly through Flood Square to Third Avenue, to East One Hundred Eighty Fourth Street, to Crescent Avenue, to East One Hundred Eighty Seventh Street, to Southern Boulevard, to East Fordham Road, thence Easterly along East Fordham Road to Boston Road, to Pelham Parkway North, to Bronx Park East, to Rosewood Street, to White Plains Road, to East Gun Hill Road, to Holland Avenue, to East Two Hundred Eleventh Street, to Carlisle Place, to East Two Hundred Thirteenth Street, to Barnes Avenue, to East Two Hundred Thirteenth Street, to Bronxwood Avenue, to Tilden Street, to East Two Hundred Twelfth Street, to Paulding Avenue, to East Gun Hill Road, to Laconia Avenue Avenue, to Granada Place, to Baychester Avenue, thence Southeasterly along Baychester Avenue to Needham Avenue, to East Two Hundred Twenty Fourth Street, to Schieffelin Avenue, to East Two Hundred Twenty Second Street, to Mickle Avenue, to Needham Avenue, to Eastchester Road, to Boston Road, to East Gun Hill Road, to Bouck Avenue, to Adee Avenue, to Yates Avenue, to Burke Avenue, to Bronxwood Avenue, to Arnow Avenue, to Williamsbridge Road, to Boston Road, to Astor Avenue, to Bronxwood Avenue, to Mace Avenue, to Williamsbridge Road, to Pelham Parkway South, to Esplanade South, to Paulding Avenue, to Lydig Avenue, to Colden Avenue, to Bogart Avenue, thence Southerly along Bogart Avenue to Brady Avenue, to Antin Place, to Bronxdale Avenue, to Hunt Avenue, to

Sagamore Street, to Amethyst Street, to Rhinelander Avenue, to Unionport Road, to Morris Park Avenue, to East Tremont Avenue, thence Westerly along East Tremont Avenue to the Grand Concourse, to West One Hundred Eighty First Street, to University Avenue, to West Burnside Avenue, to Sedgwick Avenue, to West Tremont Avenue, thence Westerly along West Tremont Avenue and West Tremont Avenue extended to the waters of the Harlem River, thence Northerly through the waters of the Harlem River to the dividing line between the County of Bronx and the County of New York, thence Northerly, Westerly, and Southerly along said dividing line to the waters of the Harlem River, thence Westerly through the waters of the Harlem River and the Hudson River to a point where the boundary line between the County of Bronx and the County of Westchester extended Westerly intersect the waters of the Hudson River, thence Easterly along the said dividing line between the County of Bronx and the County of Westchester to the place of beginning.

(Population 1960 Federal Census 358,258)

Twenty Fourth. The Twenty Fourth Congressional District shall consist of that part of the County of Bronx beginning at a point where the Major Deegan Expressway intersects the dividing line between the County of Bronx and the County of Westchester, thence Southerly along Major Deegan Expressway to East Two Hundred Thirty Third Street, to Webster Avenue, to East Gun Hill Road, to Reservoir Place, to Reservoir Oval East, to Bainbridge Avenue, to East Mosholu Parkway South, to East Two Hundred Fourth Street, to Villa Avenue, to Van Cortlandt Avenue, to Jerome Avenue, thence Southerly along Jerome Avenue, to Bedford Park Boulevard, to The Grand Concourse, to East One Hundred Ninety Ninth Street, to

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Valentine Avenue, to East One Hundred Ninety Seventh Street, to Briggs Avenue, to East Kingsbridge Road, to East Fordham Road, thence Easterly along East Fordham Road to Washington Avenue, thence Southerly through Flood Square to Third Avenue, to East One Hundred Eighty Fourth Street, to Crescent Avenue, to East One Hundred Eighty Seventh Street, to Southern Boulevard, to East Fordham Road, thence Easterly along East Fordham Road to Boston Road, to Pelham Parkway North, to Bronx Park East, to Rosewood Street, to White Plains Road, to East Gun Hill Road, to Holland Avenue, to East Two Hundred Eleventh Street, to Carlisle Place, to East Two Hundred Thirteenth Street, to Barnes Avenue, to East Two Hundred Thirteenth Street, to Bronxwood Avenue, to Tilden Street, to East Two Hundred Twelfth Street, to Paulding Avenue, to East Gun Hill Road, to Laconia Avenue, to Granada Place, to Baychester Avenue, thence Southeasterly along Baychester Avenue to Needham Avenue, to East Two Hundred Twenty Fourth Street, to Schieffelin Avenue, to East Two Hundred Twenty Second Street, to Mickle Avenue, to Needham Avenue, to Eastchester Road, to Boston Road, to East Gun Hill Road, to Bouck Avenue, to Adee Avenue, to Yates Avenue, to Burke Avenue, to Bronxwood Avenue, to Arnow Avenue, to Williamsbridge Road, to Boston Road, to Astor Avenue, to Bronxwood Avenue, to Mace Avenue, to Williamsbridge Road, to Pelham Parkway South, to Esplanade South, to Paulding Avenue, to Lydig Avenue, to Colden Avenue, to Bogart Avenue, thence Southerly along Bogart Avenue, to Brady Avenue, to Antin Place, to Bronxdale Avenue, to Hunt Avenue, to Sagamore Street, to Amethyst Street, to Rhinelander Avenue, to Unionport Road, to Morris Park Avenue, to East Tremont Avenue, to Bronx Park Avenue, to East One Hundred Seventy Seventh Street, thence Easterly to the intersection of East One Hundred Seventy Seventh Street, Bronx River Parkway Southerly

extension and Cross Bronx Expressway, thence Easterly along the Cross Bronx Expressway to Beach Avenue, to Mansion Street, to St. Lawrence Avenue, to East Tremont Avenue, to White Plains Road, to Westchester Avenue, to and Southerly around Hugh J. Grant Circle to Westchester Avenue, to Olmstead Avenue, to Newbold Avenue, to the intersection of Newbold Avenue, Cross Bronx Expressway and Pugsley Avenue, thence Easterly along Cross Bronx Expressway to Gleason Avenue, thence Westerly along Gleason Avenue to Beach Avenue, to Watson Avenue, to Leland Avenue, to Bruckner Boulevard North, to White Plains Road, to Bruckner Boulevard South, to Olmstead Avenue, to Quimby Avenue, to Pugsley Avenue, to Seward Avenue, to Castle Hill Avenue, to Cincinnatus Avenue, to Havemeyer Avenue, to Lacombe Avenue, to Newman Avenue, to Seward Avenue, to Thieriot Avenue, to Lafayette Avenue, to Rosedale Avenue, to Randall Avenue, to Commonwealth Avenue, to Lacombe Avenue, thence Westerly along Lacombe Avenue to Bronx River Parkway, to Randall Avenue, and Randall Avenue extended Westerly and Southerly to the waters of the Bronx River, thence Southerly and Northerly through the waters of the Bronx River, East River, Long Island Sound to the dividing line between the County of Bronx and the County of Westchester, thence Westerly along the said dividing line to the place of beginning, also including Hunters Island, Hog Island, Middle Reef Island, East Nonations Island, South Nonations Island, Machaux Island, the Blauzes, Hart Island, High Island, Chimney Sweeps, Twin Islands, Rat Island, Green Flats Island, Big Tom Island, Cuban Ledge Island, City Island, and any other island not aforementioned.

(Population 1960 Federal Census 384,940)

TWENTY FIFTH. The Twenty Fifth Congressional District shall consist of that part of the County of Westchester

consisting of the City of Yonkers and the City of Peekskill and the Towns of Greenburgh, Eastchester, Mt. Pleasant, Ossining, Cortlandt, also the county of Putnam.

(Population 1960 Federal Census 438,409)

TWENTY SIXTH. The Twenty Sixth Congressional District shall consist of that part of the County of Westchester consisting of the Cities of White Plains, Mt. Vernon, New Rochelle, Rye and the Towns of Yorktown, Somers, North Salem, Mamaroneck, Scarsdale, Lewisboro, Bedford, Poundridge, Pelham, New Castle, North Castle, Rye and Harrison.

(Population 1960 Federal Census 402,204)

TWENTY SEVENTH. The Twenty Seventh Congressional District shall consist of the Counties of Rockland, Orange, Sullivan and Delaware.

(Population 1960 Federal Census 409,349)

TWENTY EIGHTH. The Twenty Eighth Congressional District shall consist of the Counties of Dutchess, Ulster, Columbia, Greene and Schoharie.

(Population 1960 Federal Census 396,122)

TWENTY NINTH. The Twenty Ninth Congressional District shall consist of the Counties of Albany and Schenectady, also that part of the County of Rensselaer in the City of Troy consisting of Wards One, Two, Three, Four, Six, Seven, Eight, Nine, Eleven and Twelve.

Population 27,343

(Population 1960 Federal Census 453,165)

THIRTIETH. The Thirtieth Congressional District shall consist of the Counties of Saratoga, Washington, Warren, Fulton, Hamilton, Essex, Clinton and Rensselaer part.

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(Population 1960 Federal Census 460,409)

THIRTY FIRST. The Thirty First Congressional District shall consist of the Counties of St. Lawrence, Jefferson, Lewis, Franklin and Oswego.

(Population 1960 Federal Census 353,183)

THIRTY SECOND. The Thirty Second Congressional District shall consist of the Counties of Oneida, Madison and Herkimer.

(Population 1960 Federal Census 385,406)

THIRTY THIRD. The Thirty Third Congressional District shall consist of the Counties of Chemung, Broome, Tioga and Tompkins.

(Population 1960 Federal Census 415,333)

THIRTY FOURTH. The Thirty Fourth Congressional District shall consist of the County of Onondaga.

(Population 1960 Federal Census 423,028)

THIRTY FIFTH. The Thirty Fifth Congressional District shall consist of the Counties of Ontario, Yates, Seneca, Cayuga, Cortland, Chenango, Otsego and Montgomery.

(Population 1960 Federal Census 386,148)

THIRTY SIXTH. The Thirty Sixth Congressional District shall consist of that part of the County of Monroe within and bounded by a line beginning at a point where the waters of the Genesee River and Charlotte Harbor intersect the waters of Lake Ontario, thence running in a Southerly di-

rection through the waters of Charlotte Harbor and the Genesee River to a point where the Genesee River intersects the city line, thence Easterly and Northerly along said city line as it winds and turns to the intersection of the city line and the waters of Lake Ontario, and thence through the waters of Lake Ontario to the place of beginning, together with the Towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford and Webster, and also including County of Wayne.

(Population 1960 Federal Census 410,943)

THIRTY SEVENTH. The Thirty Seventh Congressional District shall consist of that part of the County of Monroe within and bounded by a line beginning at a point where the waters of the Genesee River and Charlotte Harbor intersect the waters of Lake Ontario, thence running in a Southerly direction through the waters of Charlotte Harbor and the Genesee River to a point where the Genesee River intersects the city line, thence Westerly and Northerly along said city line as it winds and turns to the intersection of the city line and the waters of Lake Ontario, and thence through the waters of Lake Ontario to the place of beginning, together with the Towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Rush, Sweden and Wheatland, together with the counties of Orleans, Genesee, Wyoming and Livingston.

(Population 1960 Federal Census 410,432)

THIRTY EIGHTH. The Thirty Eighth Congressional District shall consist of the Counties of Chautauqua, Cattaraugus, Allegany, Steuben and Schuyler.

(Population 1960 Federel Census 382,277)

THIRTY NINTH. The Thirty Ninth Congressional District shall consist of that part of Erie County described as fol-

lows: Beginning at a point where Starin Avenue intersects the dividing line between the City of Buffalo and the Town of Tonawanda, thence Southerly along Starin Avenue to Taunton Place, to Standish Road, to Parkside Avenue, to North Drive, to Sterling Avenue, to Taunton Place, to Norwalk Avenue, to Linden Avenue, to Parkside Avenue, to Amherst Street, to Nottingham Terrace, to Elmwood Avenue, to Lafayette Avenue, to Main Street, to LeRoy Avenue, to Kensington Avenue, to the East City line, thence Northerly, and Westerly along said city line to the place of beginning; also that part of the City of Lackawanna described as follows: Beginning at a point where South Park Avenue intersects the city lines of the City of Buffalo and the City of Lackawanna, thence Southerly along South Park Avenue, to Nason Parkway, to Electric Avenue, to Ridge Road, to Franklin Street, to Prospect Place, to Center Street, to Kirby Avenue, to Electric Avenue, to the intersection of Electric Avenue, the South city line of the City of Lackawanna and the town line of Hamburg, thence Easterly, Northerly and Westerly along said Lackawanna city line to the place of beginning; also including the Towns of Amherst, Clarence. Newstead, Cheektowaga, Lancaster, Alden, Marilla, Elma, West Seneca, Hamburg, Orchard Park, Aurora, Wales, Holland, Colden, Boston, Eden, Evans, Brant, North Collins, Collins, Concord, Sardinia and that part of the Cattaraugus Indian Reservation within Erie County.

(Population 1960 Federal Census 435,393)

Fortieth. The fortieth Congressional District shall consist of that part of Erie County described as follows: Beginning at a point where Starin Avenue intersects the dividing line between the City of Buffalo and the Town of Tonawanda, thence Southerly along Starin Avenue to Taunton Place, to Standish Road, to Parkside Avenue, to

North Drive, to Sterling Avenue, to Taunton Place, to Norwalk Avenue, to Linden Avenue, to Parkside Avenue, to Amherst Street, to Nottingham Terrace, to Elmwood Avenue thence Northerly to Amherst Street, to Reservation Street, to Grote Street, to Howell Street, to Amherst Street, to Thompson Street, to Hamilton Street, thence Westerly along Hamilton Street and Hamilton Street extended to the waters of the Niagara River, thence Northerly through the waters of the Niagara River to a point where Vulcan Street extended Southwesterly intersects the waters of the Niagara River, thence Northeasterly along Vulcan Street and Vulcan Street extended and the dividing line between the City of Buffalo and the Town of Tonawanda to the place of beginning, also including the Towns of Tonawanda, Grand Island, City of Tonawanda and the Tonawanda Indian Reservation and the County of Niagara.

(Population 1960 Federal Census 435,684)

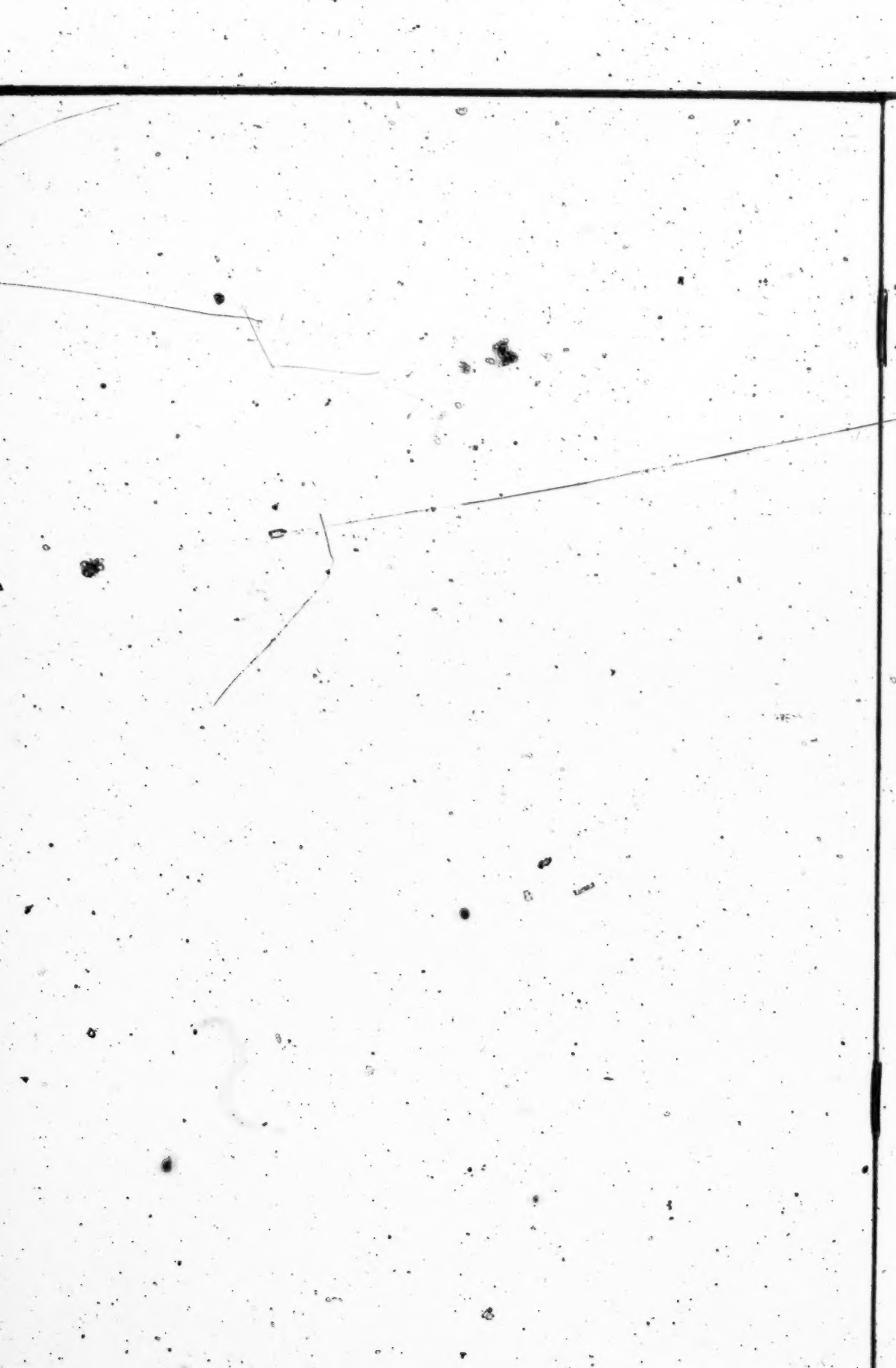
Forty First. The Forty First Congressional District shall consist of that part of the County of Erie described as follows: Beginning at a point within the City of Buffalo where Hamilton Street extended intersects the waters of the Niagara River, thence Easterly along Hamilton Street extended and Hamilton Street to Thompson Street, to Amherst Street, to Howell Street, to Grote Street, to Reservation Street, to Amherst Street, to Elmwood Avenue, to Lafayette Avenue, to Main Street, to LeRoy Avenue, to Kensington Avenue, to the East city line of the City of Buffalo, thence Southerly and Westerly along said city line and city line extended to the waters of Lake Erie, thence Northerly through the waters of Buffalo Harbor, Lake Erie and Niagara River to the place of beginning including Squaw Island; also that part of the City of Lackawanna described as follows: Beginning at a point where South

*Appendix C.*

Park Avenue intersects the city lines of the City of Buffalo and the City of Lackawanna, thence Southerly along South Park Avenue to Nason Parkway, to Electric Avenue, to Ridge Road, to Franklin Street, to Prospect Place, to Center Street, to Kirby Avenue, to Electric Avenue, to the intersection of Electric Avenue, the South city line of the City of Lackawanna and the town line of Hamburg, thence Westerly, Northerly and Easterly along the city line of the City of Lackawanna to the place of beginning.

(Population 1960 Federal Census 435,880)

Added L.1961, c. 980, eff. Jan. 1, 1962.



SUPREME COURT, U. S.

FILED

NOV 3 1967

JOHN F. DAVIS, CLERK

No. 691

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1967

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NELSON A. ROCKEFELLER, as Governor of the State of New York, LOUIS J. LEFKOWITZ, as Attorney General of the State of New York, JOHN P. LOMENZO, as Secretary of State of the State of New York, MALCOLM WILSON, as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, and ANTHONY J. TRAVIA, as Speaker and Presiding Officer of the Assembly of the State of New York,

Defendants-Appellants,

v.

DAVID I. WELLS and DONALD S. HARRINGTON, individually and as Acting Chairman of the State Committee of the Liberal Party of the State of New York,

Plaintiffs-Appellees.

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## BRIEF OF PLAINTIFFS-APPELLEES

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NELSON A. ROCKEFELLER, as Governor of the State of New York, LOUIS J. LEFKOWITZ, as Attorney General of the State of New York, JOHN P. LOMENZO, as Secretary of State of the State of New York, MALCOLM WILSON, as Lieutenant Governor of the State of New York, and Presiding Officer of the Senate of the State of New York, and ANTHONY J. TRAVIA, as Speaker and Presiding Officer of the Assembly of the State of New York,

Defendants-Appellants,

v.

DAVID I. WELLS and DONALD S. HARRINGTON, individually and as Acting Chairman of the State Committee of the Liberal Party of the State of New York,

Plaintiffs-Appellees.

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## BRIEF OF PLAINTIFFS-APPELLEES

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### Preliminary Statement

This Brief is submitted by plaintiffs-appellees in opposition to the appeal filed by the defendants-appellants and docketed in this Court on the 6th day of October, 1967. It will be the position of plaintiffs-appellees in this Brief that the appeal filed herein is wholly without merit and that the issues presented are clear and have been repeatedly determined by this Court, and, accordingly, present no novel or

constitutional question which this Court should hear on appeal.

The jurisdictional statement of defendants-appellants properly contains the opinion below, the statute involved, the questions presented, and the statement of the case.

Issue is taken, however, with the contention of defendants-appellants, that the questions presented are substantial.

Defendants-appellants raise basically three points on appeal. They contend:

A. That the challenged State statute is not unconstitutional since the Congressional districting thereunder does not contain a variation of more than 15% (defendants-appellants contend that a maximum variation of up to 15% from the State's average district population is permissible, yet they blandly concede that there is a maximum variation of 15.1% from the average, occurring in the 12th Congressional District in Kings County)—see (p. "7" of defendants-appellants' Jurisdictional Statement). It is respectfully submitted that based on this point alone, even if we were to concede that a maximum variation of 15% is permissible, which we do not, the challenged statute is unconstitutional and invalid, warranting an affirmance of the order, judgment and decree below.

B. That plaintiffs lack standing to bring the within action.

C. That the remedy imposed by the District Court is unfair in that the District Court erred in refusing to permit the existing Congressional district lines to remain in effect in the State of New York until the 1970 census figures are available.

In the within Brief, plaintiffs-appellees will deal *seriatim* with the points raised by defendants-appellants.

## POINT I

**The claim that the challenged statute is constitutional in that the maximum variation in Congressional Districts in the State of New York does not exceed 15% of the average is wholly erroneous and without foundation.**

Initially, for the sake of emphasis, plaintiffs-appellees again wish to call this Court's attention to the concession made by the defendants-appellants that there is a variation of 15.1% from the average, occurring in the 12th Congressional District in Kings County.

The State further contends that the New York Legislature's action, in 1961, in enacting the challenged statute, was "a good faith effort .... to make substantial equality of population the controlling standard in the establishment of Congressional lines" (p. 6).

It is the position of plaintiffs-appellees that whether or not the 1961 action represented "a good faith effort," that action clearly violates the standards of equality which have since been made clear in *Wesberry* v. *Sanders*, 376 U. S. 1, and subsequent cases. The State's argument is analogous to a plea that a separate-but-equal school facility established before 1954, be permitted to continue in existence because, at the time of its establishment, it represented "a good faith effort" to conform to the law as it was then understood.

The State (p. 6) further refers to the Interim Report of the Joint Legislative Committee on Reapportionment (1961 Legis. Document No. 45). That Report began with the words: "In the absence of Federal . . . constitutional . . . standards governing the creation of Congressional districts. . . ." But this very premise was erroneous. This Court clearly pointed out in *Wesberry* that there *is* a Federal Constitutional standard, that set forth in Article I,

Section 2, and that standard is one of substantial equality of population. We need not, of course, point out that Article I, Section 2 was an integral part of the federal Constitution in 1961, when the statute here under attack was enacted, just as it had been for more than a century and a half prior to that date. The earlier failure of the legislatures of New York, and other states to heed that constitutional provision and the earlier failure of the federal courts to enforce it certainly do not excuse its continued violation now, almost three and one-half years after this Court explicitly and unequivocally stated its meaning.

The legislative committee, in this same 1961 report, also expressed the view that a maximum variation of 15% "would preserve substantial equality of population . . ." Two recent decisions suffice for comment on this point. In *Jones* v. *Falcey*, 48 N. J. 25 (S. C. N. J., July 23, 1966), the New Jersey Supreme Court said that "The Constitution . . . does not contemplate that there is a range of deviation within which a State may maneuver, with or without reason." And in *Preisler* v. *Secretary of State of Missouri*, 257 Fed. Supp. 953, aff'd as *Kirkpatrick* v. *Preisler*, 385 U. S. 450, the District Court said: "Our decision in this case . . . does not rest on whether or not (any) members of the 1965 General Assembly did or did not establish a policy 'to stay within an arbitrary figure of 10%. . . .' The only constitutionally permissible policy that could have been followed . . . is that set forth in Article I, Section 2 of the Constitution of the United States, as that section has been defined by the United States Supreme Court in *Wesberry* v. *Sanders*."

The State (p. 7) further indicates that a 15% standard was advocated by the American Political Science Association and by former President Truman. Yet it must be obvious that such views were merely expressions of opinion without any legal or constitutional significance; further-

more, in both instances, the indicated position was formulated prior to *Wesberry* and the other fair representation rulings of recent years.

In *Swann* v. *Adams,* 385 U. S. 440, 444, Mr. Justice White wrote that this Court in *Reynolds* v. *Sims,* 377 U. S. 533, had indicated "that variations from a pure population standard might be justified by such state policy considerations as the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts or the recognition of natural or historical boundary lines." But the State, in the present case, has at no point proven or even attempted to prove that any of the many gross departures from reasonable population equality established by the 1961 statute were based on any such considerations.

In the second full paragraph on p. "8", the State makes two points: first, that *Swann* v. *Adams,* 385 U. S. 440, is not analogous to the present case because the statute invalidated in that case involved population variations which were somewhat greater than those established by the New York statute here under attack; and second, that the *Swann* ruling dealt with what the State has, on previous occasions in this case referred to as a "curative" statute (one enacted after a pre-*Reynolds* statute had been invalidated), whereas this case involves an "original" statute (that is, one enacted prior to this Court's apportionment and districting decisions of 1964).

With regard to the argument that the disparities dealt with in *Swann* were greater than those involved here, we note, first, that in *Reynolds,* this Court wrote that "more flexibility may . . . be constitutionally permissible with respect to state legislative apportionment than in Congressional districting." In *Drum* v. *Seawell,* 250 F. Supp. 922, a federal district court struck down North Carolina's

Congressional districting statute for excessive deviation from equality at the very same time that it upheld the constitutionality of that State's legislative apportionment system, even though the latter encompassed a considerably *wider* numerical departure from equality than the former. (See also *Preisler* v. *Secretary of State of Missouri*, 257 F. Supp. 953, aff'd as *Kirkpatrick* v. *Preisler*, 385 U. S. 450.) But in addition we note that it has now become apparent that the controlling rule in both state legislative apportionment and Congressional districting cases is a rule of "rational justification": That except for *de minimis* variations, only those departures from equality which can be proven to have a rational and not otherwise unconstitutional basis will be tolerated. And in this connection we note again that the State, in this case, has at no point attempted to present any rational justification for the glaring departures from equality which were established under the New York statute.

With regard to the attempt to draw a distinction between this case and *Swann* on the grounds that a "curative" statute was involved in the latter case, it is our contention that such a distinction has no valid basis. Neither this nor any other federal court has, to our knowledge, ever drawn such a distinction, nor is there any reason why one should be drawn. The constitutional standards of equality which were made clear in *Wesberry, Reynolds* and subsequent rulings, apply with equal force to statutes whether enacted before or after 1964. The standards do not become stricter merely because a legislature may have flouted those standards two or three times previously. The New York Legislature's 1961 action must be judged by the same rules which apply to all other Congressional districting statutes, just as the Florida Legislature's 1966 action was judged in *Swann* by the same rules which apply to all other state legislative apportionment statutes.

## POINT II

**The claim that plaintiffs lack standing in this action is wholly without merit.**

Initially it should be noted that the right of plaintiff, Donald S. Harrington, to bring this action as Acting Chairman of the State Committee of the Liberal Party of the State of New York, was at no time raised in the court below, either by way of motion or by way of argument.

The footnote referring to this point in the Jurisdictional Statement of defendants-appellants (p. 4) is the first reference to this matter. Defendants-appellants neither made any motion with respect to the right of Donald S. Harrington to proceed on behalf of the Liberal Party of the State of New York, nor was this question ever raised in argument. It is respectfully submitted that such failure constitutes a complete waiver of any such claim, even if it had merit, which we respectfully submit it does not. Moreover, an examination of the complaint on file and before this Court, reveals that plaintiff, Donald S. Harrington, has instituted action "individually and as Acting Chairman of the State Committee of the Liberal Party of the State of New York." (See caption as well as page "4" of complaint.) The complaint further states that the "Liberal Party is a duly constituted political party of the State of New York, as defined in Section 2, subd. 4 of the Election Law of the State of New York, having obtained more than 50,000 votes, to wit, 242,675 votes for its party condidate for governor at the Gubernatorial Election held in the State of New York on November 6, 1962" (p. "4", Para. "Seventh" of complaint). It should be further noted that Donald S. Harrington signed the complaint on June 30, 1966 and that his signature was notarized. No evidence to contradict his right as Acting Chairman of the State Com-

mittee of the Liberal Party of the State of New York to bring the action on behalf of the Liberal Party of the State of New York was ever introduced.

The State further contends (p. "9") that plaintiffs-appellees have never established that they have been personally injured by the statute attacked in this proceeding. In this connection we need only refer to the affidavit of plaintiff-appellee, David I. Wells, sworn to August 29, 1966, on file herein, at 46 thereof, which is part of the Record on Appeal, wherein it was clearly stated that the over-all operation of Chapter 980 of the Laws of 1961 of the State of New York causes a distortion in the political character of New York State's representation in the Federal House of Representatives and that that distortion has a seriously adverse effect upon the disposition of legislation which was and is of deep concern to plaintiffs-appellees as well as to all others similarly situated. Furthermore, since the right of Donald S. Harrington to bring this action as Acting Chairman of the State Committee of the Liberal Party of the State of New York has never been denied, we point out as further evidence of injury, that a very substantial number of the members and enrollees of the Liberal Party are residents of Congressional Districts which are seriously under represented in the Congress of the United States as a result of the operation of the statute here under attack.

## POINT III

**The State's argument that the District Court erred in refusing to permit the existing Congressional District lines to remain in effect for the elections of 1968 and 1970 is wholly lacking in legal merit and runs contrary to the decisions of this Court.**

The State points out (p. "3" item "(d)") that a further redistricting will be necessary immediately following the 1970 census. But it is significant to note that such redis-

tricting cannot be used as the basis of Congressional elections in this State until November 1972, and cannot form the basis of the State's representation in Congress until the opening of the 93rd Congress in January 1973, more than five years in the future.

The State contends (p. "5") that "New York will be forced to experience three different sets of Congressional district lines within a six-year period." This may be unfortunate, but had the 1961 law not been violative of the principles of equitable representation, or had the State acted voluntarily between 1964 and 1966 to bring its districting arrangement into line with the constitutional principles made quite clear in *Wesberry* and *Reynolds*, such a situation would have been avoided. Furthermore, this same situation prevails today in at least 11 other states:

| | |
|---|---|
| California | North Carolina |
| Florida | Oklahoma |
| Indiana | Tennessee |
| Massachusetts | Texas |
| Missouri | Washington |
| New Jersey | |

In all but two (Oklahoma and Washington) the situation results from the courts having declared existing districting statutes invalid. Indeed, in Indiana, the situation is the direct result of the ruling of this Court in *Duddleston* v. *Grills*, 385 U. S. 455. Furthermore, in eight of these 11 states (all but California, Indiana and New Jersey) new districting statutes have already been enacted. All of these statutes will operate in only two elections: 1968 and 1970.

Throughout the nation's history, apportionment and districting laws based on the census figures gathered at the beginning of each decade have remained the basis of Congressional representation throughout the decade, and were not superseded until after the next census figures became available 10 years later. For example, the census

figures gathered in 1950 formed the basis for the districting laws which governed the elections of 1958 and of 1960 —even though by the time those elections took place, the figures were eight to ten years old. There is, therefore, no reason why figures gathered in 1960 should not be used to establish an apportionment law to govern the elections of 1968 and 1970. Indeed, the State itself favors using an apportionment based on the 1960 census figures: the 1961 statute.

The question really comes down to a choice between *two* alternatives. Since the State has indicated that it is not possible to obtain census figures which are any more recent than 1960, there is no possibility of using updated figures as the basis for the apportionment of seats for the 1968 and 1970 elections. Therefore, the two remaining alternatives are:

A) The 1961 statute—which was based on the 1960 figures.

B) A new statute—which would also be based on the 1960 figures.

Since, under either of these alternative possibilities, the apportionment law to be used for the next two Congressional elections will have to be based on the 1960 census figures, the accuracy of those figures becomes an academic question.

The 1961 statute is demonstrably unfair. The court below ruled that it violates the principles enunciated by this Court in *Wesberry, Reynolds* and subsequent rulings. The district court ordered the New York Legislature to enact a new statute, in conformity with those principles, to govern the two elections which must take place before any apportionment based on 1970 census figures can take effect. The choice, therefore, is between an unfair districting statute based on the latest available figures and a fair statute based on the latest available figures. Under these circumstances,

there can be no doubt as to the proper choice—both morally and legally.

Of further significance herein is the fact that in February, 1966, in *Swann* v. *Adams*, 383 U. S. 210, this Court, dealing with an almost identical plan—to permit continued use of an unconstitutional apportionment for three more years (the exact time span involved in the present case)—held that there was "no warrant for perpetuating . . . an unconstitutional apportionment for three more years".

In the first line of the Statement of the Case (p. "3"), it is noted that the present case was not begun until five years after the enactment of the districting statute. It is true that the statute was enacted in 1961 and that the instant case was filed in 1966. However, the two basic cases upon which this action rests—*Wesberry* and *Reynolds*—were not decided until 1964. Following those decisions, it was plaintiffs' expectation that the New York Legislature would itself act to redraw the State's Congressional district boundaries so as to comply with the constitutional standards therein indicated. When, however, three sessions of the Legislature had passed and no corrective action had been initiated by the legislative leaders of either major party or by the Governor (or indeed, even by any individual member of the New York Legislature), it became obvious that no voluntary compliance would be forthcoming. The within action, therefore, was filed in the light of the failure of the proper State authorities to take any steps toward bringing the State law into conformity with the federal Constitutional requirements. (We note also, in this connection, that the first of those three sessions of the Legislature [1964] was under Republican control; the second [1965] was under Democratic control; the third [1966] was under divided control. This action was filed on July 5, 1966, at the conclusion of the 1966 session, when it had become apparent that changes in political circumstances alone would not suffice to spur the Legislature into corrective action in this area.)

## CONCLUSION

**The order, judgment and decree of the lower court should be affirmed.**

Dated: New York, N. Y., October 25, 1967.

Respectfully submitted,

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

## ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL. *v.* WELLS ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 691. Decided December 18, 1967.

PER CURIAM.

The motion to affirm is granted and the judgment is affirmed.

MR. JUSTICE HARLAN, dissenting.

This action was brought by appellees under the Civil Rights Act. 42 U. S. C. §§ 1983, 1988, for declaratory and other relief. Their complaint alleged that New York's congressional districting statute does not conform to the requirements of Art. I, § 2, of the United States Constitution, as those requirements are defined in *Wesberry* v. *Sanders*, 376 U. S. 1. A three-judge court was convened.

The court found, on the basis of 1960 census statistics, that the population of one of New York's 41 congressional districts varied from the average population of the districts by 15.1%, and that 12 other districts varied from the population average by as much as 10%. It concluded that such a variation from average, without a suitable explanation, "violates constitutional requirements." — F. Supp. —, at —. The court noted that there have been "substantial" population changes in these districts since 1960, and that complete accuracy in redistricting must await the results of the 1970 census, but reasoned that a suitable compromise would be to require redistricting immediately, premised on the best population figures now available. Revisions could then be made when the 1970 census statistics were released. This Court simply affirms, without elaboration or opinion.

There are, in my opinion, two principal issues here worthy of plenary consideration. First, the District Court thought it "too clear for debate" that this districting statute "violates constitutional requirements as enunciated by the Supreme Court." — F. Supp., at —. There are few issues in reapportionment cases that are clear beyond debate, and, with respect, the invalidity of this statute is certainly not among them. It is true that variations of as much as 18.28% were disapproved in *Swann* v. *Adams*, 385 U. S. 440, but the Court there also re-emphasized that the approval or disapproval of the variations in one State "has litttle bearing on the validity of a similar variation in another State." *Id.*, at 445. And see *Reynolds* v. *Sims*, 377 U. S. 533, 578. The impossibility of calculating the proper result in these cases from numerical variations is illustrated by *Toombs* v. *Fortson*, 241 F. Supp. 65. The District Court there said specifically that "we will base any test as to the reasonableness of variances on the departure figure of 15 percent." *Id.*, at 70. This Court simply affirmed without opinion. 384 U. S. 210. See also *Moore* v. *Moore*, 246 F. Supp. 578, 582. Yet in this case, in which variations no greater than 15.1% are in issue, the Court again summarily affirms.

Presumably the size of the numerical variation is not alone decisive,[1] but if the "particular circumstances of the case," *Reynolds* v. *Sims*, *supra*, at 578, *Swann* v. *Adams*, *supra*, at 445, may be crucial to the validity of districting statutes, then surely the Court should endeavor to define what such circumstances are, and to indicate how they are relevant. Instead, the Court more and more often disposes of reapportionment cases sum-

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[1] I note, however, that the District Court in *Preisler* v. *Secretary of State of Missouri*, 257 F. Supp. 958, said specifically that "population and population alone is the sole standard for congressional representation." *Id.*, at 973. This Court affirmed without opinion. 385 U. S. 450. See also *Bush* v. *Martin*, 224 F. Supp. 499, 511; affirmed *sub nom. Martin* v. *Bush*, 376 U. S. 222.

marily, see, *e. g.*, *Toombs* v. *Fortson, supra; Duddleston* v. *Grills*, 385 U. S. 455; *Kirkpatrick* v. *Preisler*, 385 U. S. 450; *Lucas* v. *Rhodes*, — U. S. —; when the Court does issue an opinion, it is content simply to recite that such circumstances may be relevant, without undertaking any elucidation. See, *e. g.*, *Swann* v. *Adams, supra*. All this has the effect of leaving the state legislatures,[2] the lower courts, and even Congress[3] without meaningful guidance.

Second, the confusion created by the Court's reticence is compounded in cases in which it is held that a districting statute does not satisfy constitutional requirements, by uncertainty as to the appropriate next step. See, *e. g.*, *Lucas* v. *Rhodes, supra*. The District Court

[2] The New York legislature, for example, made careful efforts to comply with the constitutional requirements, as they had been enunciated by this Court. The Joint Legislative Committee on Reapportionment thus expressly recognized "the absence of Federal and State constitutional and statutory standards," but concluded that "the most important standard is substantial equality of population." Interim Report of the Joint Legislative Committee on Reapportionment, 1961 N. Y. Leg. Doc. No. 45, p. 4. It added that "[w]hile exact equality of population is the ideal, it is an ideal that, for practical reasons, can never be attained. Some variations from it will always be necessary. The question arises as to what is a permissible fair variation." *Ibid.*

[3] The House Committee on the Judiciary, for example, reported favorably in 1965 on a bill which was intended to implement the requirements of *Wesberry* v. *Sanders, supra*, by creating a series of standards for the apportionment of congressional districts. The Committee noted that "'[t]he courts . . . have been reluctant to prescribe standards . . . .'" H. R. Rep. No. 140, 89th Cong., 1st Sess., 2. One standard included in the bill was a maximum permissible variation of 15% above or below the average population of the congressional districts within a State. *Id.*, at 2–3. Given the present state of the law in this area, it is difficult to imagine how a legislator could sensibly decide whether such a maximum variation satisfied applicable constitutional requirements. Indeed, Representative Kastenmeier dissented from the Committee's report, noting that "there is serious doubt whether H. R. 5505 can, in light of the *Wesberry* case, withstand constitutional attack." *Id.*, at 5.

here noted that the Court's cases provided "[l]ittle guidance or help," but concluded, nonetheless, that immediate redistricting should be ordered, based on the best available population figures. It thought that this expedient was in the pattern set by *Swann* v. *Adams*, 383 U. S. 210. *Swann*, however, was merely a brief *per curiam* opinion, which did not purport to establish any general rule on appropriate remedies. As the elections of 1968 approach, it seems to me that the time has come for this Court to provide clearer guidance to the lower courts on the proper remedy in reapportionment cases. More particularly, some indication should be given as to what part, if any, 1960 census figures are to play, alone or in combination with later, albeit incomplete or unverified, population figures. See *Lucas* v. *Rhodes*, — F. Supp. —, — U. S. —.

I would note probable jurisdiction, and set the case for argument.